

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1381

March 20, 1961

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1381

March 20, 1961

1. STATE REGULATIONS - REGULATION NO. 17 - RULE 12 AMENDED -
NEW TYPE OF TRANSIT INSIGNIA PROVIDED.

TO ALL LICENSEES:

Since 1934 the owners of passenger vehicles for which transit insignia have been issued have complained that the requirement of affixing insignia to the body of passenger vehicles has been a hardship since such vehicles bearing insignia on the body are oftentimes denied travel on parkways in various states and further, that insignia, once affixed to the body, cannot be removed without damaging the paint.

To obviate such problems I have devised a smaller insignia for passenger vehicles (not including station wagons) with unmovable rear windows. The new insignia is 3-1/2" x 2-3/4" and must be affixed to the inside of the unmovable rear window in the lower left hand corner thereof.

Accordingly, effective May 1, 1961, Rule 12 of State Regulation No. 17 has been amended as follows:

"Except as otherwise provided in this Rule, transit insignia must be directly affixed to the vehicle for which such insignia has been issued immediately upon its receipt. In the case of any vehicle with a commercial or station wagon type of body or passenger type of body with movable rear window, such insignia must be so affixed upon the exterior of the body (and not on any window) on the left side thereof, and shall be clearly visible at all times. In the case of any vehicle with a passenger type of body (not including station wagons) and an unmovable rear window, such insignia must be so affixed to the rear window, in the lower left hand corner thereof, in a manner not to interfere with the driver's rear view, and shall be clearly visible at all times.

"In lieu of affixing the insignia in the manner prescribed above, it may be carried in the vehicle while engaged in the transportation of alcoholic beverages, provided an inscription is painted on the exterior of the body of the vehicle on the left side thereof, clearly visible at all times, which inscription shall, in letters not less than one (1) inch in height and of proper and proportionate width, indicate the number of the current insignia and the date of its expiration in form as follows (inserting the appropriate number and year):

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
TRANSIT INSIGNIA NO.....
EXPIRES APRIL 30, 19....."

WILLIAM HOWE DAVIS
DIRECTOR

Promulgated Thursday, February 23, 1961
Effective Monday, May 1, 1961.

Filed with the Secretary of State (N.J.) Thursday, February 23, 1961

2. GIFTS OF ALCOHOLIC BEVERAGES BY MANUFACTURERS AND WHOLESALERS TO RETAIL ASSOCIATIONS FOR DISPENSING AT SOCIAL AFFAIRS - SPECIAL PERMIT NO. AVAILABLE - HEREIN OF REQUIREMENTS AND RESTRICTIONS.

January 31, 1961

TO ALL MANUFACTURERS AND WHOLESALERS:

It has come to my attention that for many years past, it has been common practice for manufacturers and wholesalers of alcoholic beverages to supply limited amounts of the alcoholic beverage products manufactured and sold by them to associations of retailers for dispensing by the associations at their social affairs such as conventions, dinners, etc., as a long-accepted means of legitimate trade promotion and brand advertising of such products in a specialized area of the market, i.e., among the retailers themselves who are the sellers of those products to consumers.

Unfortunately, the alcoholic beverages so furnished have usually been accounted for as "samples", and their furnishing justified as within the privileges of the sample permit authorized by Rule 13 of State Regulation No. 34. However, such permits by their terms authorize only the dispensing of alcoholic beverages (1) by the drink, (2) to certain retailers or their employees, (3) on the retailer's licensed premises, (4) from a limited supply carried by a solicitor of the permittee, and (5) in future, only as to new brands, in accordance with release to manufacturers and wholesalers dated December 20, 1960 (Bulletin 1370, Item 2). Obviously, the furnishing of products for consumption at industry association affairs can by no stretch of the imagination be justified as the furnishing of samples pursuant to a sample permit.

Held within reasonable limits, the long-established practice may be deemed not inimical to the basic goals of sound liquor control. Hence, pursuant to power conferred by R.S. 33:1-39, and particularly so much thereof as authorizes the making of special rulings with reference, *inter alia*, to "gifts of...products...", I specially rule that manufacturers and wholesalers of alcoholic beverages may furnish any product manufactured or sold by them to any unlicensed group, organization or association of retail licensees for dispensing and consumption at any social affair of such group, etc., such as conventions, dances, outings, picnics and dinners, provided that with respect to each such affair a special permit is first obtained by the manufacturer or wholesaler furnishing the alcoholic beverages.

Application for requisite permit shall indicate the kind, quantity and size of containers of alcoholic beverages intended to be furnished; the source of supply; the date, time and place of the social affair; the estimated number of persons who will attend the affair; and the name of the organization conducting the affair at which the alcoholic beverages will be furnished. The application must be accompanied by fee of \$5.00 (the minimum permissible under R.S. 33:-174 which authorizes issuance of special permits but only upon payment of a fee) in cash, certified check or money order payable to the Division of Alcoholic Beverage Control.

Permits issued upon such applications will contain, among other standard provisions, requirements as follows:

(1) Alcoholic beverages other than malt alcoholic beverages authorized to be furnished for the affair must be clearly marked "DONATION -- Not For Sale" stamped in ink across the label of the bottle, in letters not less than one-half inch in height and of proportionate width.

(2) Alcoholic beverages authorized to be delivered to the affair, whether transported in a vehicle bearing transit insignia

or not, must be accompanied by the permit.

(3) Alcoholic beverages delivered to the affair must be receipted for by a responsible officer of the association and the receipt retained on the New Jersey licensed premises of the manufacturer or wholesaler furnishing the alcoholic beverages, for a period of one year from the date thereof, available for inspection by agents of the Director.

It is emphasized that the foregoing announcement of policy and procedure is made on a tentative basis pending further study of the problem and developments that may occur pending formulation of firm practice and procedure.

WILLIAM HOWE DAVIS
DIRECTOR

3. GIFTS OF ALCOHOLIC BEVERAGES BY MANUFACTURERS AND WHOLESALERS TO LICENSEE ASSOCIATIONS FOR DISPENSING AT SOCIAL AFFAIRS - MODIFICATION OF REQUIREMENTS AND RESTRICTIONS RELATING TO REQUISITE SPECIAL PERMITS.

February 23, 1961

TO ALL MANUFACTURERS AND WHOLESALERS:

Reference is made to release dated January 31, 1961, Bulletin 1381, Item 2 to all manufacturers and wholesalers concerning their furnishing of alcoholic beverages to licensee associations for dispensing by the associations at their social affairs. As indicated therein, the procedural requirements were established on a tentative basis, pending further study.

Upon further consideration of the problem, and in view of the developments that have occurred since the announcement of the requirement of special permits to authorize such conduct, I have concluded that administrative supervision of this practice will be facilitated by a modification of the requirements previously announced, as follows:

Manufacturers and wholesalers of alcoholic beverages may furnish any product manufactured or sold by them to any unlicensed group, organization or association of licensees for dispensing and consumption at any social affair of such group, etc. such as conventions, dances, outings, picnics and dinners, pursuant to a special permit issued to the manufacturer or wholesaler furnishing the alcoholic beverages.

Application for requisite permit shall be made by petition indicating (a) the estimated total quantity of alcoholic beverages intended to be furnished during the calendar year and (b) the estimated number of social affairs at which such alcoholic beverages will be furnished. The petition must be accompanied by fee of \$25.00 in cash, certified check or money order payable to the Division of Alcoholic Beverage Control.

Permits will be issued for the calendar year and will contain, among other standard provisions, requirements as follows:

(1) Alcoholic beverages may be furnished at any particular social affair pursuant to the permit only in such amount as may be approved by the Director upon written request of the manufacturer or wholesaler which request shall be submitted in duplicate not less than seven days prior to the date of the affair. Said request must be based upon prior written request to the manufacturer or wholesaler by the licensee association, and shall indicate the date, time

and place of the affair; the name of the organization conducting the affair; the approximate number of persons expected to attend the affair; the quantity, size of containers and kind of alcoholic beverages to be furnished.

(2) Alcoholic beverages other than malt alcoholic beverages authorized to be furnished for the affair must be clearly marked "DONATION -- Not for Sale" stamped in indelible ink across the label of the bottle, in letters not less than one-half inch in height and of proportionate width; or, in the event that the bottles bear embossed labels, a gummed strip or sticker bearing the prescribed legend shall be securely glued to the label or if the bottles bear no label then such strip or sticker shall be securely glued to the strip stamp.

(3) Alcoholic beverages authorized to be delivered to the affair, whether transported in a vehicle bearing transit insignia or not, must be accompanied by the permit or a true copy thereof.

(4) Alcoholic beverages delivered to the affair must be receipted for by a responsible officer of the association. Such receipts shall be retained on the licensed premises of the manufacturer or wholesaler furnishing the alcoholic beverages, attached to the original request received from the association and the approval received by the manufacturer or wholesaler from the Director, for a period of one year from the date of expiration of the permit, available for inspection by agents of the Director.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - TOTH v. FIELDSBORO.

FRANK AND ANNA TOTH,)	
t/a HILLCREST INN,)	
)	
Appellants,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
BOROUGH COUNCIL OF THE BOROUGH OF)	
FIELDSBORO,)	
)	
Respondent.)	

Sanford Soren, Esq., Attorney for Appellants.
Alexander Denbo, Esq., Attorney for Respondent.
Frank S. Stabile, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on July 18, 1960, by a vote of four to two, it denied appellants' application for transfer of Plenary Retail Consumption License C-3, from premises 32 North Front Street to premises to be constructed on Fourth Street, Borough of Fieldsboro. The two premises are approximately one mile from each other.

"Appellants, in their petition of appeal, allege in substance that the action of respondent was erroneous in that: (a) it was arbitrary and capricious; (b) the tavern is presently located in a Class A residential zone whereas the proposed site is in an agricultural zone in which a majority of the commercial property

is located and in which such use is authorized'; (c) no resolution or act of the Council was ever passed limiting a third tavern on Fourth Street; (d) 'such action was detrimental to the interests of the Borough and works an immeasurable, illegal and unjust hardship on petitioner' and (e) no legal or factual reason was given for denying the transfer.

"Respondent in its answer denied appellants' allegation and states that the action taken by the Borough of Fieldsboro was valid and in the discretion of the Borough Council.

"The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15.

"Frank Toth, one of the licensees, John Utley, Mayor of the Borough, and Elizabeth Harbour, Borough Clerk, were called as witnesses for appellants. It appears from their testimony and the exhibits received in evidence that appellants operate a tavern known as Hillcrest Inn, which is situated between two residences at 32 No. Front Street in a Class A residential zone in the Borough of Fieldsboro; that the Borough, by its Mayor, is negotiating to acquire title to vacant land which will be converted into a little-league baseball field, a municipal playground and a public park; that part of the said land is across the street from and another part adjoins appellants' licensed premises; that the site to which appellants seek to transfer their license is on Fourth Street, the main business street of the Borough on which two licensed premises are presently located; that one of those licensed premises is about 150 feet from the proposed site and 900 feet from the street, the other licensed premises being 'approximately 500 to 1000 feet' therefrom; that appellants plan to erect a 60' by 32' cinder-block building, consisting of a bar area, service kitchen, storage room and living quarters and that across the street from the proposed site is vacant land owned by a chemical company, which is in the process of expanding its facilities.

"It further appears from the minutes of the special meeting at which appellants' application for transfer was considered that Councilman Brettell stated that 'he was not in favor of the transfer because 25 years ago there was a motion on the books that there would only be two taverns on Fourth Street'; that Councilmen Yeager and Weaver stated they 'would go along with Brettell'; that Councilman Burkley said 'he was put in office by the people and would do what they wanted', evidently referring to a petition signed by 70 residents objecting to the transfer; that Councilman Lawson said 'he felt the transfer should be granted as we should go ahead and not behind'; and that on roll call Councilmen Brettell, Yeager, Weaver and Burkley voted against the transfer and Councilman Lawson and Mayor Utley voted in favor of transferring the license.

"At the hearing herein, Elizabeth Harbour testified that she had examined the records of 25 years ago and did not discover any resolution or motion which would substantiate Councilman Brettell's statement.

"Mayor Utley testified that the transfer of appellants' license would be 'to the advantage of our town. It would give us one more ratable, and we are in need of ratables... It would take away traffic that travels by our present school and our former playground... It would take the traffic away from that area. You have to go by both of these to get to this tavern. To me they are both very important', and that if the license was transferred, 'it would be much easier to patrol the area. All

of the businesses we have in town are located on Fourth Street'.

"Katherine W. Glenk, holder of a plenary retail consumption license on Fourth Street, testified that she objected to the transfer because the proposed site is about 150 feet from the entrance to her business establishment 'and I think it would cause a hazard of some kind in the near future between the plant and the traffic on the highway'.

"There is no inherent right to transfer a license to other persons or premises. An issuing authority, in the exercise of its sound discretion, may grant or deny a transfer. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that refusal of a transfer is arbitrary or unreasonable, the action of the issuing authority will be reversed. Re Palmer v. Atlantic City, Bulletin 1017, Item 1, and cases cited therein.

"Considering the evidence adduced herein, it is apparent that the grant of appellants' application would move the license a considerable distance from its present location to an entirely different section of the Borough, in which there are presently existing two plenary retail consumption licensed premises to serve the needs and convenience of the residents in that area.

"It has long been held that the question of whether or not a license should be permitted in a particular area or in a particular location is a matter within the sound discretion of the issuing authority and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority's but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of his personal views. Redfield v. Long Branch et al., Bulletin 1027, Item 1. Evidently, appellants failed to satisfy the members of the Borough Council that the public interests would be best served by the transfer of the license and I find nothing in the record indicating or even suggesting that respondent's refusal to grant appellants' application was inspired by improper motives. See Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960) affirmed 33 N.J. 404 (Sup. Ct. 1960). I conclude, therefore, that appellants have failed to sustain the burden imposed upon them of establishing that respondent's action was erroneous (Rule 1 of State Regulation No. 15) and I recommend that an order be entered affirming respondent's action and dismissing the appeal."

Written exceptions to the Hearer's Report and written argument in support of the exceptions were filed with me by appellants' attorney. Thereafter, on my own motion, pursuant to Rule 14 of State Regulation No. 15, I heard oral argument.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the Hearer's Report and written exceptions and argument with respect thereto, and the oral argument before me, I find that Mayor Utley and Councilman Lawson, who voted to grant appellants' application for transfer of their license, gave as their reasons that appellants' licensed premises are in a residential neighborhood between two private dwellings; that it would be easier for the police to patrol the area to which the transfer is sought; that a little league baseball field and a playground are contemplated for location directly across the street from appellants' tavern and that the transfer would be to the advantage of the Borough in that it would add new ratables and reduce the traffic on Front Street on which a public school is located. I find further that the only reason given by Councilman Brettell for denying the transfer was that a motion had been passed by the governing body 25 years ago

which prohibited more than two taverns on Fourth Street. I find also that Councilmen Yeager, Weaver and Burkley concurred with Councilman Brettell. These four councilmen are apparently in error because the evidence shows that a search of the records disclosed no such motion or resolution.

In view of the aforesaid, I conclude that the reasons stated by the Mayor and Councilman Lawson, which induced them to vote in favor of appellants' application for a place-to-place transfer of their license, represent a very thorough evaluation of the situation confronting them, with which I am in full accord. Under the circumstances, the recommendation of the Hearer is disapproved.

Accordingly, it is, on this 1st day of February, 1961,

ORDERED that the action of the Borough Council of the Borough of Fieldsboro in denying appellants' application for a place-to-place transfer of their license be and the same is hereby reversed, and respondent is directed to grant the transfer and to issue the license if and when the building to be erected on the proposed site is constructed in accordance with the plans and specifications heretofore filed with and approved by respondent.

WILLIAM HOWE DAVIS
DIRECTOR

5. APPELLATE DECISIONS - SILVERSTEIN v. BELMAR.

LOUIS SILVERSTEIN, trading as)	
LOU'S TAVERN,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
v.)	AND ORDER
)	
BOARD OF COMMISSIONERS OF THE)	
BOROUGH OF BELMAR,)	
)	
Respondent.)	

Charles Frankel, Esq., Attorney for Appellant.
Harold Feinberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on August 23, 1960 it suspended appellant's license for forty days, effective September 12, 1960, after appellant was adjudged guilty of two separate charges alleging that on May 27, 1960 he sold and delivered alcoholic beverages at his licensed premises to William ---, age 16, and to Robert ---, age 17, in violation of Rule 1 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered on September 8, 1960 staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"In his petition of appeal, appellant alleges respondent's action was erroneous because its decision was contrary to the weight of the evidence and that the penalty imposed is excessive.

"Respondent, in its answer, denies appellant's allegation and contends that the penalty imposed was not excessive but in

accordance with the recommendation of the Division.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, the transcript of the proceedings before respondent Board was received in evidence and additional testimony was presented by appellant, in accordance with Rule 8 of said Regulation.

"It appears from the transcript that respondent called as its principal witnesses William ---, Robert ---, Frank --- and James B. Pierce, a local police officer.

"William testified that he was born on June 13, 1943, and, hence, was 16 years of age at the time of the alleged violation; that on May 27, 1960 at about 8:30 p.m., he, Robert and Frank (two minor companions) drove to the vicinity of defendant's licensed premises; that he and Robert entered the licensed premises; that Frank waited outside; that he purchased two half cases of Schaefer beer and two quart bottles of Ballantine beer from a man behind the counter for 'around \$5'; that prior thereto upon request by this male for identification, he had displayed a draft card indicating the person named thereon was of legal age; that he was not requested to make a written representation of his age, and that he was unable to make positive identification of the licensee as the one who sold him the alcoholic beverages. William further testified that he, accompanied by Robert, left the premises with the alcoholic beverages and that when they had reached the street, James Pierce, a local police officer, took him to police headquarters where he left the alcoholic beverages.

"On cross-examination, William testified that he paid for the alcoholic beverages with monies contributed by himself and his two companions before entering the licensed premises; and that he was apprehended by the police officer in the vicinity of the licensed premises.

"Robert substantially corroborated the testimony (direct and cross-examination) of William. In addition, Robert testified that on May 27, 1960 aforesaid, he was 17 years of age; that he and William 'asked for the beer'; that 'Billy showed his card and the man gave it to him'; that he and William carried the alcoholic beverages into the street and that he, William and Frank were taken to the police headquarters by Officer Pierce.

"Frank testified that William and Robert entered the licensed premises to buy some beer; that he had contributed some money towards the purchase of the same; that when William and Robert returned from the licensed premises they were carrying the alcoholic beverages in question and that Officer Pierce took him, William and Robert to police headquarters.

"On cross-examination, Frank testified that he did not enter the licensed premises; that he remained in the car and that he did not observe what transpired in the licensed premises.

"Officer Pierce testified that he is a member of the Belmar Police Department; that on May 27, 1960 at about 8:30 p.m. he was patrolling the area wherein the licensed premises are located; that he observed aforesaid three minors park their car around the far corner of the licensed premises (located on the west side of F Street about 65 feet north of the n/w corner of 9th Avenue and F Street); that he saw William and Robert leave the automobile, cross 9th Avenue and enter the licensed premises, following which he proceeded towards the licensed premises, looked through its front window and observed William and Robert engaged in conversation with Louis Silverstein, the licensee. Pierce further testified that he kept the car and its occupant under surveillance; that within a few

minutes he observed William and Robert walking down F Street toward the parked car with the alcoholic beverages in their possession; that he brought the three minors to police headquarters for further questioning and that when he learned their true ages he placed the alcoholic beverages in his locker where they remained intact until July 27, 1960, the day of the local board hearing.

"On cross-examination, Officer Pierce reiterated his direct testimony.

"Louis Silverstein, testifying on his own behalf, denied making the alleged sales to William and Robert and denied seeing them prior to date of hearing. The licensee further testified that he stocks the sizes and brands of alcoholic beverages in question; that the total retail price of the same is \$5.40; that he maintains a cash register in his package goods store and that all sales of alcoholic beverages made on May 27, 1960 are listed on the register tape. The licensee further testified the bag containing aforesaid two bottles of ale is a 'Union' bag; that he does not use 'Union' bags; and that for the past number of years he has been using a 'No. 8 bag, Rawhide, 100 percent Kraft' exclusively.

"On cross-examination, the licensee testified that he has used and has in possession 12-pound 'Union' bags; that he never bought 'Union' bags in the size (8 pound) containing the aforesaid two bottles of ale.

"At the hearing held herein, Ben Silverstein, brother and employee of the licensee, testified that the licensee is the holder of a plenary retail consumption license with broad package privileges; that the licensed premises consist of a barroom and a package store with separate entrances from the street; that for the past two years he has been in charge of the liquor store; that on May 27th aforesaid he was in the store from 9:00 a.m. to about 9:20 p.m.; that he did not make a sale of the alcoholic beverages as alleged by the respondent; that the licensee was not present in the package store at the time and date of the alleged violation and that there is another package store on the west side of F Street a couple of hundred feet north of the licensed premises.

"On cross-examination, Ben Silverstein testified that on May 27th aforesaid, he was relieved of his duties by the licensee during the noon hour for fifteen minutes and by a clerk during his dinner period and that the licensee took charge of the liquor store from 9:15 p.m. to closing time.

"The case presents a conflict between the principal witnesses produced by the respondent and the witnesses called by the appellant. It appears that on May 27, 1960 at about 8:30 p.m., William (age 16) accompanied by Robert (age 17) entered appellant's liquor store; that William had purchased some alcoholic beverages in the licensed premises with monies contributed by himself, Robert and a third minor companion; that Robert only assisted William in removing the alcoholic beverages from the premises; that they were seen entering the premises by a local police officer who had also observed them in conversation with the licensee; that within a few minutes after entering the licensed premises the officer saw William and Robert carrying the alcoholic beverages in the vicinity of the licensed premises and took them in custody for questioning. The appellant denies the allegations and states that he had never seen the minors prior to the date of the hearing before the local board.

"I have carefully considered the testimony, both oral and written, adduced herein together with the briefs filed by the attorneys for the litigants and find that William, Robert and

Officer Pierce gave an accurate and truthful account of what transpired in this case and am unable to find any inconsistencies or defects in their testimony and cannot conceive that they would conspire against the licensee. With respect to the charge based on the sale to William, I conclude that the preponderance of the believable evidence presented establishes the guilt of the appellant.

"With respect to the charge alleging that the appellant sold alcoholic beverages to Robert, I am of the opinion there is insufficient evidence to support the same.

"I recommend that an order be entered reversing the action of the respondent in finding the appellant guilty for selling alcoholic beverages to Robert and affirming their action in finding the appellant guilty for selling alcoholic beverages to William.

"In view of my recommendations, I recommend that the matter be remanded to the respondent solely for reconsideration as to the quantum of the suspension. Cf. Gonzales & Borros v. Elizabeth, Bulletin 1344, Item 3."

Written exceptions to the Hearer's Report and written argument thereof were filed with me by the appellant's attorney, pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the facts and circumstances appearing herein and agree with the Hearer's findings and conclusions that the action of respondent be reversed as to the sale of alcoholic beverages to Robert and be affirmed as to the sale to William. However, I shall not accept the Hearer's recommendation that the matter be remanded to the respondent for reconsideration as to the quantum of suspension. The penalty for a sale of alcoholic beverages to a 16-year-old minor carries the same suspension as that of a sale to a 16 and 17-year-old minor. With respect to the penalty imposed by the respondent, it has always been the policy of this Division that a suspension imposed by the local issuing authority in disciplinary proceedings should not be disturbed unless it has been adequately shown on appeal to have been so manifestly excessive to warrant a reduction thereof. Robinson et al v. Newark, Bulletin 54, Item 2. The penalty imposed herein does not appear to be unreasonable or unduly excessive and there is no evidence of any improper motivation on the part of respondent thereof. Cf. Branham v. Harrison, Bulletin 1331, Item 1.

I shall affirm the action of the respondent as to the penalty imposed and reinstate the suspension of forty days heretofore imposed.

Accordingly, it is, on this 6th day of February, 1961,

ORDERED that the forty-day suspension of appellant's license imposed by the respondent is hereby reimposed and reinstated to commence at 2:00 a.m., Monday, February 13, 1961 and to terminate at 2:00 a.m., Saturday, March 25, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. APPELLATE DECISIONS - DOC'S SPA INC. v. PATERSON.

DOC'S SPA, INC., A CORPORATION)
 OF NEW JERSEY,)
)
 Appellant,)
)
 v.)
)
 BOARD OF ALCOHOLIC BEVERAGE CONTROL)
 FOR THE CITY OF PATERSON.)
)
 Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

 Emil Weisser, Esq., Attorney for Appellant.
 Harry L. Schoen, Esq., by Adolph A. Romei, Esq., Attorney for
 Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board whereby it denied appellant's application for a person-to-person transfer of plenary retail consumption license C-43 from 91 East Main Street Corp. to appellant. The application was denied by a two-to-one vote of the members of the Board. The licensed premises are located at 91 East Main Street, Paterson.

"Appellant in its petition of appeal alleges, in substance, that respondent Board's action was arbitrary and resulted from bias, passion, prejudice and mistake on the part of the members of said Board who had voted to deny the transfer.

"It appears from the evidence presented herein that Bernard Doornbos who is president of appellant-corporation and holder of 98% of its capital stock, in his individual name presently holds a liquor license for other premises at 219 Water Street, Paterson.

"According to the minutes of the meeting held on November 22, 1960 (Exhibit R-3 in evidence), the respondent Board denied the application for transfer because, among other things, warnings were given to Bernard Doornbos about the manner in which he operated his Water Street establishment, the last of which was given by the respondent Board on June 24, 1959 relative to loud music and use of profane language. It further appears from the said minutes that Chairman Cheevers of respondent Board stated, 'The objectors who appeared here at the last meeting (November 9, 1960) stated that they did not want the Water Street crowd in their neighborhood on East Main Street.'

"At the hearing on this appeal, no objectors appeared in opposition to the transfer.

"Bernard Doornbos testified that some time ago he disposed of his stock in 91 East Main Street Corp.; that he owns the building where said license is now located and resides on the second floor thereof; that during the past three years no disciplinary charges were preferred against him as a liquor licensee and that his license, including the current licensing term, for premises 219 Water Street has been renewed each year.

"Respondent Board's contention of the unfitness of Bernard Doornbos is without merit in the instant case for it utterly overlooks the fact that respondent granted him a license for the

current licensing term despite its contention that if he were a stockholder in a corporation holding a license it would be detrimental to the public interest. Cf. Zicherman v. Newark, Bulletin 227, Item 7. Thus, it is apparent that respondent Board's action was arbitrary and unreasonable in refusing to approve appellant's application for the transfer of the license in question.

"It might be well to remind appellant, however, of what was stated in Four Corners Bar et al. v. Newark et al., Bulletin 1152, Item 1, namely that:

'It is to be borne carefully in mind that respondent Board has full opportunity (in the exercise of its duty under R.S. 33:1-24 and R.S. 33:1-31) to enforce primarily the Alcoholic Beverage Law and Regulations so far as they pertain to or refer to or are in any way connected with retail licenses, to consider the manner in which the premises are hereafter conducted and, in the event of a violation, to take prompt and effective action.'

"Under the circumstances appearing herein, it is recommended that the action of the respondent Board be reversed and that application for the person-to-person transfer of the license in question be approved."

The attorneys representing the parties to this appeal advise in writing that they would not file exceptions to the recommendation made in the Hearer's Report submitted in this matter.

I have carefully examined the evidence and the Hearer's Report and concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 14th day of February 1961,

ORDERED that the action of the respondent Board, in denying the transfer of the license in question, be and the same is hereby reversed and respondent is hereby directed to grant the application filed by appellant herein.

WILLIAM HOWE DAVIS
DIRECTOR

ACTIVITY REPORT FOR FEBRUARY 1961

ARRESTS:		
Total number of persons arrested	-----	23
Licensees and employees	----- 12	
Bootleggers	----- 11	
SEIZURES:		
Motor vehicles - trucks	-----	1
Stills - 50 gallons or under	-----	1
Distilled alcoholic beverages - gallons	-----	3.36
Wine - gallons	-----	124.75
Brewed malt alcoholic beverages - gallons	-----	7.87
RETAIL LICENSEES:		
Premises inspected	-----	567
Premises where alcoholic beverages were gauged	-----	435
Bottles gauged	-----	6,972
Premises where violations were found	-----	48
Violations found	-----	57
Unqualified employees	----- 14	
Prohibited signs	----- 13	
Reg. #38 sign not posted	----- 8	
Application copy not available	----- 6	
Other mercantile business	----- 4	
Improper beer taps	----- 1	
Other violations	----- 11	
STATE LICENSEES:		
Premises inspected	-----	37
License applications investigated	-----	7
COMPLAINTS:		
Complaints assigned for investigation	-----	297
Investigations completed	-----	263
Investigations pending	-----	140
LABORATORY:		
Analyses made	-----	155
Refills from licensed premises - bottles	-----	10
Bottles from unlicensed premises	-----	25
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	14
Persons fingerprinted for non-criminal purposes	-----	175
Identification contacts made with other enforcement agencies	-----	149
Motor vehicle identifications via N. J. State Police teletype	-----	1
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	6
Violations involved	-----	7
Sale during prohibited hours	----- 6	
Failure to close premises during prohibited hours	----- 1	
Cases instituted at Division	-----	13
Violations involved	-----	17
Sale to minors	----- 4	
Permitting immoral activity on premises	----- 3	
Permitting foul language on premises	----- 2	
Sale during prohibited hours	----- 1	
Sale below filed price	----- 1	
Permitting bookmaking on premises	----- 1	
Conducting business as a nuisance	----- 1	
Fraud in application	----- 1	
Hindering investigation	----- 1	
Permitting brawl on premises	----- 1	
Possessing liquor not truly labeled	----- 1	
Cases brought by municipalities on own initiative and reported to Division	-----	22
Violations involved	-----	30
Sale to minors	----- 15	
Sale during prohibited hours	----- 5	
Permitting brawl on premises	----- 4	
Permitting gambling on premises	----- 1	
Employee working while intoxicated	----- 1	
Conducting business as a nuisance	----- 1	
Hindering investigation	----- 1	
Sale to non-members by club	----- 1	
Unqualified employees	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	32
Appeals	----- 4	
Disciplinary proceedings	----- 19	
Eligibility	----- 7	
Seizures	----- 2	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	962
Licenses	----- 8	
Solicitor's permits	----- 45	
Employment "	----- 241	
Disposal permits	----- 51	
Social affair "	----- 250	
Wine permits	----- 3	
Miscellaneous permits	----- 165	
Transit insignia	----- 185	
Transit certificates	----- 14	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued	-----	33
Enforcement files established	-----	7

WILLIAM HOWE DAVIS
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: March 6, 1961

8. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THE PROMENADE, INC.)
t/a PROM SNAK BAR)
237 Park Avenue)
Newark 7, New Jersey)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-250, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Norman N. Popper, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On December 8, 1960, an ABC agent tested defendant's open stock of liquors and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of seven of said bottles varied substantially in solids and acids from the contents of genuine bottles of the labeled brands.

Defendant has no prior adjudicated record, although the records of the Division show that on March 29, 1956, a warning letter was sent to defendant for possessing several bottles of questionable liquor. Because of the length of time which has elapsed since said letter was sent, I shall suspend defendant's license for thirty days, the minimum penalty imposed in "refill" cases where seven bottles are involved. Re Riverview Tavern, Inc., Bulletin 1322, Item 2. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 16th day of February 1961,

ORDERED that Plenary Retail Consumption License C-250, issued by the municipal Board of Alcoholic Beverage Control of the City of Newark to The Promenade, Inc., t/a Prom Snak Bar, for premises 237 Park Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, February 27, 1961 and terminating at 2:00 a.m., Friday, March 24, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 55 DAYS, LESS 5 FOR PLEA.

AUTOMATIC SUSPENSION - PETITION TO LIFT GRANTED AT EXPIRATION OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

In the Matter of Disciplinary Proceedings against MARTIN & SADIE TANIS t/a S & M TAVERN 137 Highland Street Paterson 4, New Jersey

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-253, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

Auto. Susp. No. 192 In the Matter of the Automatic Suspension of License C-253 held by MARTIN & SADIE TANIS (same address)

Murner & Murner, Esqs., by James J. Murner, Jr., Esq., Attorneys for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"You sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Frank ---, age 19 on December 26, 1960 and Richard ---, age 17, Tunis ---, age 17 and George ---, age 18 on December 27, 1960 and allowed, permitted and suffered the consumption of alcoholic beverages by said persons in and upon your licensed premises on the above stated respective dates; in violation of Rule 1 of State Regulation No. 20."

Acting upon information obtained from the North Haledon Police Department, ABC agents obtained signed and sworn statements from Richard --- (age 17), Tunis --- (age 17) and George --- (age 18), and an oral admission from one Frank --- (age 19).

From these statements, and other statements made by the aforementioned minors to officers of the North Haledon Police Department, it appears that on December 26, 1960, at about 3:30 p.m., George and Frank entered the defendant's licensed premises and remained in said premises until approximately 5:30 p.m., during which time they each consumed three or four glasses of beer. These were served by a bartender called "Marty", later identified as Martin Tanis, the licensee, who made no effort to obtain any written acknowledgment of age from them.

It further appears from the sworn statements of George,

Richard and Tunis that on December 27, 1960, at about 9:00 p.m., they entered the said licensed premises and were each served drinks of alcoholic beverages by the licensee, without any attempt made to ascertain their ages. Tunis was served about ten "shots" of whiskey, while the other two consumed beer for which they were charged ten cents per glass.

Thereafter, the four minors identified the licensed premises as the place where they were served and consumed the said alcoholic beverages and also identified the licensee as the bartender known as "Marty" who sold and served the same as set forth hereinabove.

Defendants have no prior record. Since it appears that four minors were involved and that some of them consumed large quantities of alcoholic beverages, I shall suspend defendants' license for thirty-five days. Cf. Re Hafner, Bulletin 1139, Item 10; Re Zielinski, Bulletin 1255, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Martin Tanis, one of the licensees, was convicted of the sale of alcoholic beverages to minors, in violation of R.S. 33:1-77, on January 24, 1961, in the Municipal Court of the City of Paterson, and was fined \$50 on each of four counts. Said conviction automatically suspends defendants' license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of these proceedings, the license has not been picked up by ABC agents. Re Huetter, Bulletin 1305, Item 6. However, on the basis of the facts herein, it is my judgment and I shall, on my own motion, lift the automatic suspension upon the expiration of the suspension imposed in these proceedings.

Accordingly, it is, on this 21st day of February, 1961,

ORDERED that Plenary Retail Consumption License C-253, issued by the Board of Commissioners of the City of Paterson to Martin & Sadie Tanis, t/a S & M Tavern, for premises 137 Highland Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m., Wednesday, March 1, 1961, and terminating at 3:00 a.m., Friday, March 31, 1961; and it is further

ORDERED that the statutory automatic suspension be lifted effective at 3:00 a.m., Friday, March 31, 1961, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS
DIRECTOR

10. STATE LICENSES - NEW APPLICATIONS FILED.

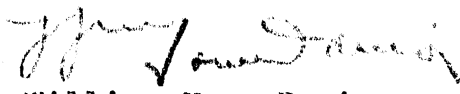
Joseph Cohen and Robert Dickman
t/a Lake Beverage Distributors
314 Route 46
Rockaway Borough, N. J.

Application filed March 14, 1961 for place-to-place transfer of State Beverage Distributors License SBD-15 from 319 Route 46, Rockaway Borough, N. J.

Alexander Maccia, Jr.
t/a Garden State Beer Depot
3 Hopper Avenue
Nutley, N. J.

Application filed March 16, 1961 for person-to-person, place-to-place transfer of State Beverage Distributor's license SBD-3 from John Lutz, t/a Lutz Beverage Co., 12 Ludlow Street, Jersey City, N.J.

New Jersey State Library


William Howe Davis
Director