

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2083

FEBRUARY 5, 1973

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1. APPELLATE DECISIONS - THE VACSTON CO., INC. v. NEWARK.

The Vacston Co., Inc., t/a) Village Barn,) Appellant,) v.) Municipal Board of Alcoholic) Beverage Control of the City) of Newark,) Respondent.) -----)	On Appeal CONCLUSIONS and ORDER
---	--

Sheldon and Freda, Esqs., by Victor J. Freda, Esq., Attorneys
for Appellant
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for
Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution adopted April 24, 1972, suspended the plenary retail consumption license of appellant for sixty days following its determination that appellant permitted gambling on the licensed premises in violation of Rules 6 and 7 of State Regulation No. 20. The effective date of suspension was stayed by the Director by order dated May 8, 1972, pending determination of this appeal.

Appellant contends that the Board predicated its findings upon insufficient evidence and that there was insufficient proof that the offense charged took place with the knowledge of the licensee or its employees. In its answer the Board denied these contentions and alleged that its findings were reasonably based upon the factual testimony taken before it.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses. The transcript of testimony of the proceedings held before the Board was admitted into evidence pursuant to Rule 8 of State Regulation No. 15.

The testimony as reflected in the transcript of the proceedings before the Board shows the following: Detective Clifford Minor, of the gambling squad of the Newark Police Department, entered the licensed premises on assignment, accompanied by Detective Conzuelo, and observed a patron (later identified as Louis Richeimer) taking bets of another patron (later

identified as Donald Krotchenfeld). While the detectives were present, the public pay phone, nearest to which Louis Richeimer was sitting, rang approximately six times and on each occasion Richeimer answered it. Following several calls Richeimer returned to the bar and there wrote out what appeared to be a football bet and then placed his own call to another, returned, made further notations. While this activity was going on, the bartender served them drinks when called and the witness presumed that, as the bartender heard the call for drinks, he could also hear the conversation pertinent to the bet made. This contention was vigorously refuted by counsel for appellant.

Louis Richeimer (patron of the licensee) testified that he had answered the telephone many times but the calls were for others, not himself. He admitted taking a bet from another patron and writing the bet down on a paper which he had. Later he admitted that he received two or three calls from "people that wanted lines on the football game." He further admitted taking a bet from a patron seated "three, two, three seats away from me." He further admitted his voice level when the bet was taken was sufficient to have been heard over the sound of television, and that of other conversations. When asked how it happened that phone calls were for him, he responded, "Well, the person that I was working for had given out the number." When questioned about answering the telephone, he responded by inferring that anybody who goes into the establishment might answer the phone. This response gave rise to the following colloquy with this witness:

"Q Not anybody, I don't do it. I wouldn't say anybody, I would say that anybody has an interest in over \$700 in possible bets, they would be interested in the telephone ringing at a particular time, I would say that, you know.

A I imagine so."

Testimony of the bartender, Alfred Dodge, consisted of a denial that he had any knowledge of any betting that took place; that he was familiar with the detectives and knew their occupation.

At the de novo hearing Detective Conzuelo corroborated the testimony of Detective Minor. He related the circumstances of his visit -- that there were about ten patrons present, two sitting near the entrance and the phone booth, and the remainder in a group at the other end of the bar. He was in the establishment about fifteen minutes, during which time Richeimer answered the phone about six times, wrote down bets and accepted a bet from one of the patrons. Richeimer was arrested and charged with bookmaking.

During the time the detectives were present they and the other patrons were served by the bartender.

The bartender testified that he knew of no betting activity. The president of the corporate licensee testified that no representatives of the licensee were present at the time, other than the bartender Dodge.

Appellant did not deny the existence of the gambling activity but insisted that, as the bartender had no knowledge of the bets being taken, the licensee could not be chargeable therewith. Appellant further contended that, as the charge embraced the word "lottery" and as football bets were obviously not a lottery, the charge should be dismissed. Such motion of dismissal should be denied as the charge and proofs thereon encompassed general gambling under Rules 6 and 7 of State Regulation No. 20, which would include the type of gambling described. It should be noted that, for penalty purposes, these are considered as one charge.

It is uncontroverted that gambling activity took place within the licensed premises. The crucial issue is whether or not the licensee's employee knew or should have known under the circumstances herein of the proscribed gambling activity, with the consequence that the activity was "allowed, permitted and suffered." Failure to prevent the prohibited activity is to "suffer" its occurrence. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (1947). The licensee cannot avoid its responsibility in preventing the illegal activity if he or his agents knew or should have known of its existence. Davis v. New Town Tavern, Inc., 37 N.J. Super. 376 (App.Div. 1955); In re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

The testimony discloses that, during the short interval of the detectives' visit, a half-dozen phone calls were received by the patron placing the bets, and not one of such calls was apparently to anyone else. Nor did the bartender make inquiry or express any interest in the possible recipients of such calls. Bet slips were written on the bar and a bet was made with a fellow patron, all of which was done in open view. The bartender's denial of knowledge of such furious betting activity is most implausible. I am convinced that only with the bartender's tacit approval could a betting operation, as described, be carried on. It is apparent that he knew or should have known of the proscribed activity.

The bartender's failure to take steps to prohibit the unlawful gambling activity within the licensed premises constitutes "suffering" its occurrence. Re Finbar, Bulletin 1851, Item 3; cf. Jackson v. Newark, Bulletin 1600, Item 2; Benedetti v. Trenton et al., 35 N.J. Super. 30 (App.Div. 1955).

Under the circumstances, I conclude that the licensee's guilt of the charges had been established by a fair preponderance of the believable evidence -- indeed, by substantial evidence. Re Artie Weber's Tavern, Inc., Bulletin 2023, Item 4.

It is therefore recommended that an order be entered affirming the action of the Board, dismissing the appeal herein, and fixing the effective dates for the suspension imposed by the Board and stayed by the Director's order pending entry of a further order herein.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15. I find that the matters contained in the exceptions have either been considered by the Hearer in his report or are without merit.

Having carefully considered the entire record, including transcripts of testimony, the exhibit, the Hearer's report and the exceptions filed thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 4th day of December 1972,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated May 8, 1972, staying the Board's order of suspension pending determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-535, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Vacston Co., Inc., t/a Village Barn, for premises 502 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, December 18, 1972, and terminating at 2 a.m. Friday, February 16, 1973.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - PERKINS v. NEWARK - SILVER EDGE CORP. v. NEWARK.

#3673-)
Samuel Perkins,)
)
Appellant,)
v.)
)
Municipal Board of Alcoholic)
Beverage Control of the City)
of Newark,)
Respondent.)
-----)

On Appeal

CONCLUSIONS and ORDER

#3679-)
Silver Edge Corp., t/a Silver)
Edge Vailsburg,)
Appellant,)
v.)
)
Municipal Board of Alcoholic)
Beverage Control of the City)
of Newark,)
Respondent.)
-----)

Joseph M. Keegan, Esq., Attorney for Appellant Perkins
Noonan and Flynn, Esqs., by John W. Noonan, Esq., Attorneys
for Appellant Silver Edge Corp.
William H. Walls, Esq., by Matthew J. Scola, Esq., Attorney
for Respondent
John C. Love, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The subject cases are inter-related and thus will be jointly considered and embodied in a single Hearer's report.

In Case #3673 appellant challenges the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) whereby it denied appellant's application for a person-to-person transfer of a plenary retail consumption license from Silver Edge Corp. to appellant for premises 88-94 Halstead Street, Newark.

In Case #3679 appellant challenges the Board's action in denying its application for renewal of its plenary retail consumption license for the 1972-73 license period for said premises 88-94 Halstead Street, Newark.

Upon filing of this appeal the Director entered an order on June 29, 1972, extending the term of appellant's 1971-72 license until further order herein.

In each case the Board in its answer asserted that its action was not unreasonable and was supported by the evidence.

The appeals were heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony and cross-examine witnesses.

Eugene M. Merren (secretary of the corporate appellant and one of its principal stockholders) testified that the appellant operated the tavern business since September 1968. In January 1972 it entered into a contract to transfer the liquor establishment to Samuel Perkins (appellant herein) and his brother William Perkins. Samuel Perkins was then installed as the manager of the liquor establishment. Prior to January 1972 the business catered mainly to a white "sing-along" type patronage. It was open only two nights a week, closed for the summer, and was losing money. Under the management of Samuel Perkins the operation was changed completely; soul black-oriented music was featured and the establishment was kept open every night. It did not close after Memorial Day as heretofore. The witness and another shareholder of the corporate licensee would alternately visit the licensed premises two or three nights a week in order to check the cash registers.

Since January 1972 no formal charges have been preferred against the licensee by the local law enforcement or municipal issuing authorities. However, the local police were summoned on one occasion on an alleged brawl. Upon entry the police found no evidence thereof. He is aware that area residents have objected to the operation of the premises. The nearest building to the licensed premises is located between fifty to seventy-five yards distant; the windows have been sound-proofed and the parking lot fenced in.

On cross examination the witness reiterated that he visited the licensed premises approximately twice weekly, solely to check the cash registers. He admitted stating at a meeting of the Board on June 14, 1972 that he was aware of complaints and problems connected with the operation of the subject licensed premises. He and another stockholder were involved in the operation of other taverns and were trying to work out the problems. Since January 1972 Perkins advertised the licensed premises as Perk's Silver Edge Lounge in order to promote the business.

Merren conceded that there were occasions when the garbage remained outside the premises for three days.

Bands provide live entertainment. On a "slow" night the patronage would consist of thirty-five to fifty persons. The maximum patronage is between two hundred-eighty to three hundred-ten persons. Only occasionally has he seen bottles and debris in the general area of the establishment. His patrons are not permitted to leave the premises with a glass or a bottle. "Very few" succeed in doing that.

Samuel Perkins testified that, upon entering into a contract to purchase the business of Silver Edge Corp. in January 1972, he commenced the day-to-day management of the business. Upon assuming the management thereof, he engaged three to five-piece bands. He was made aware of complaints of noise because of visitations by police officers. No formal complaints were filed against the licensee. He attempted to curb the noise by sound-proofing the building, posting a guard at the exterior of the building and issuing verbal warnings and limita-

tion of entertainment. Upon becoming aware of complaints concerning the accumulation of excessive garbage on the exterior of the premises, he hired a private scavenger. Since the time that he has been managing the licensed premises, no charges have been preferred pertaining to the violation of any liquor law.

In behalf of the Board, Toni Gaskin testified that she has resided in a building facing the licensed premises twenty-five feet distant therefrom for the past three years. When the tavern reopened in September 1971, after being closed for the summer, the patronage was caucasian. Some of the patrons raced cars around the block, shouted at each other, threw bottles on the property and blocked her driveway.

Subsequent to January 1972 the tavern remained open seven nights a week and catered to a black clientele. The noise became louder. Its patrons parked in front of her house. During intermission "they came out and sit in the truck and have the bass beat with the car top down and drink in the cars and very loud." The music would be "extremely loud." Although she had storm-windows and the bedroom was in the rear of the house, she could hear "this steady beat, bass and drums." In the front of the house she could hear the singers.

Since January 1972 she called the police an average of once or twice each week because of noise. She called the police as recently as the night prior to the hearing, that is, on August 16. She has observed individuals drink in cars and has observed that "garbage and things are tossed out on the street along the curb and on the property." On one occasion she collected a number of wine and whiskey bottles that had been accumulated from a week-end party. Due to the noise, she and her family had stayed awake until as late as 3:30 a.m. on one occasion; patrons were summoned to remove a car that was blocking her driveway. They came out "with glasses in their hands and walked down the middle of the street and holding the glasses, down the center of the street, drinking, and then smash the glasses."

On one occasion the witness and another representative of the neighborhood council called upon Samuel Perkins in order to arrive at a mutual understanding. Perkins asserted that he would sound-proof the building and operate seven nights a week. On a second occasion Perkins attended a community meeting and informed the gathering that he was "sitting on top of a gold mine, and he had taken care of the most important thing to fix the inside and make it attractive to people, and he was going to continue the operation as it was."

On cross examination the witness conceded that her home was actually about one hundred feet distant from the tavern rather than twenty-five feet as testified to previously.

Mary Avena testified that she has resided directly across the street from the tavern for the past fourteen years. Since January 1972 she has noticed a "tremendous" change in the character of the subject establishment. Most of the problems arise from "the noise coming from the Silver Edge Lounge. The band, the band is very loud, the cars, the people, the vulgarity. ... I can hear everything. Headlights, people in cars, car doors slamming, plus every time a car door slams they go in the Silver Edge and the Silver Edge also slams." The noise has disturbed her sleep. In March 1972 she observed a group of people rush out of the tavern and saw a male fire two shots at another male. Two females fainted. She called the police. However, before the police arrived the group had dispersed and there was no evidence of the shooting. She has observed patrons exit from the licensed

premises and urinate in front thereof or alongside the building or in front of her house or in front of the house next door. The witness observed patrons of the tavern "go in and out, get in a car, they drink. Lobster shells on the street, crab shells on the street, in front of my house, in front of my sister-in-law's house. My sister-in-law sweeps the street, Mr. Perkins can tell you, daily from the garbage from the patrons, from the customers of the Silver Edge."

On cross examination the witness testified that she has frequently called the police due to the parking situation and because of cars "slamming and banging constantly. Some of these people park their cars and go in the place and come out." The witness admitted that, although she had complained concerning the management of the establishment prior to the time that it came under Perkins' management, she never appeared before to object to the renewal of the license.

John Notte, a retired police officer, testified that he resides approximately one hundred ten feet distant from the front entrance of the licensed premises. Since January 1972 he noticed that traffic conditions in the area worsened because of the change in patronage from that of a neighborhood bar to a bar that drew much of its increased patronage from distant places. Although he is hard of hearing, his main complaint was directed to his allegation of loss of sleep due to the noise of the amplifiers emanating from the barroom and the slamming of car doors from 10:30 p.m. to 2 a.m.

On cross examination Notte conceded that he did not witness any brawls, narcotics trafficking or prostitution in the tavern.

The testimony of ten additional objectors who were in attendance at this hearing was not formally received in evidence because it was represented by the attorney for the Board that their testimony would be cumulative.

I shall first consider Case #3679 which involves the denial of renewal of the license because, unless the action of the Board is reversed, the question of transfer of the subject license, which is the subject matter of Case #3673, becomes moot.

The crucial issue in this appeal is whether the record substantiated and justified the Board's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App.Div. 1957). As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup.Ct. 1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse.

The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

I have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing and am persuaded that the version given by the Board's witnesses was forthright and credible. They testified with sincerity and conviction, and with a sense of public responsibility. It is quite apparent that appellant's facility contributed almost totally to the conditions delineated by these witnesses. These conditions affected the health and the welfare of the neighbors and were properly considered by the Board in its ultimate determination.

There was testimony offered by appellant that it did not violate any State regulation governing the conduct of licensees and use of licensed premises and that no disciplinary proceedings were instituted by the Board against it. However, it is understandable that local issuing authorities at times withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy. As the court stated in *Downie v. Somerdale*, 44 N.J. Super. 84, 87 (App.Div. 1957):

"... Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant the renewal of the license. Nordco, supra."

It is significant that numerous police calls were made according to testimony of witnesses. The court in Nordco, Inc. v. State, supra (43 N.J. Super. at p. 283) agreed with the Director's finding therein that "the frequency of calls upon the police demonstrated of itself that the tavern had become a 'trouble spot.'"

In its consideration of this matter it is clear that the Board was guided by the applicable principle enunciated in Tumulty v. Dunellen and Davis (App.Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"... The problem before the Council was what penalty to impose for what his investigators had discovered the licensees had done in the past. The problem before Dunellen, upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed"

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, supra.

Thus in this matter, entirely apart from the appellant's alleged culpability with respect to the deleterious conditions which surrounded this establishment, the broad question posed before the Board on the subject application for renewal was whether in the light of all the surrounding circumstances and conditions it was good for Newark and the neighborhood involved for this tavern to continue to exist at this particular location at all. The objective judgment of the Board was that its continuance would be inimical to the public interest.

There is no persuasive evidence to indicate any improper motivation on the part of the Board in its action, and there appears to be substantial evidence to support its determination herein. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1:

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts"

I find from my examination and assessment of the total record herein that the Board's determination was supported by substantial evidence and that it acted circumspectly in the public interest in its discretion to refuse to renew appellant's license for the current license period. Further, I conclude that appellant has not established that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is therefore recommended that in the subject case the Board's action be affirmed and that the appeal filed in Case #3679 herein be dismissed.

Having thus recommended in Case #3679 that the appeal be dismissed, it therefore follows that the subject matter of Case #3673 (that is, the person-to-person transfer) is thus rendered moot.

Additionally, upon reviewing the testimony of the witnesses, it is apparent that the conditions worsened during the time that the licensed premises came under the management of the prospective transferee appellant Perkins. It is apparent that Perkins was solely motivated by profit-making in callous disregard of the health and welfare of the area residents. Therefore Perkins should not be surprised that the area residents voiced their objections against a continuance of the conditions described. It

is obvious that a person-to-person transfer would not have eliminated the conditions complained of. Accordingly it is recommended that the appeal filed in Case #3673 be dismissed.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 6th day of December 1972,

ORDERED that the action of the respondent in each case be and the same is hereby affirmed and the appeals filed herein be and the same are hereby dismissed; and it is further

ORDERED that the order dated June 12, 1972, extending the term of appellant's 1971-72 license pending the determination of the appeal in Case No. 3679 be and the same is hereby vacated.

Robert E. Bower
Director

3. APPELLATE DECISIONS - YURCHAK et als. v. JERSEY CITY. et al.

John Yurchak, and The Jersey City Tavern Owners Association,)	
)	
Appellants,)	
v.)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Jersey City, and Thomas Ford,)	
)	O R D E R
Respondents.)	

No appearance on behalf of Appellants
No appearance on behalf of Respondent Board
Edward L. Keefe, Esq., Attorney for Respondent Ford

BY THE DIRECTOR:

This matter came before me at a hearing upon a petition by respondent Thomas Ford to "reconsider the determination of the Director disapproving a place-to-place transfer of his plenary retail consumption license."

In his petition respondent Thomas Ford alleges that the "conditions existing at the time of his original application have changed in that there has been a change in the number of taverns in the area and the ownership of others has changed." He further asserts that the premises from which the transfer is sought have now been demolished and, finally, that he would suffer extreme hardship by reason of the denial of this petition.

The facts may be briefly stated as follows: On May 5, 1971, Conclusions and Order were entered herein reversing the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City which, by resolution dated May 5, 1970, approved a place-to-place transfer of the plenary retail consumption license held by Thomas Ford from premises 147 Wayne Street to 323 Monmouth Street, Jersey City. Yurchak et al. v. Jersey City and Ford, Bulletin 1974, Item 1.

In the Conclusions and Order the Director found the following: On November 26, 1969, Ford secured his license and a place-to-place transfer thereof from 368 Monmouth Street to 147 Wayne Street, Jersey City. About three months previous respondent Board denied the application of the previous holder of this license for a place-to-place transfer from 368 Monmouth Street to 323 Monmouth Street (the location here involved). Ford had purchased the latter premises in June or July 1968 and operated a restaurant therein until he secured a license for Wayne Street.

On April 4, 1970 he filed his present application for a place-to-place transfer of the license from 147 Wayne Street to the premises owned by him at 323 Monmouth Street. Ford testified that the transfer was necessary because the owner of the Wayne Street premises desired them for his own use and had served him with a written notice demanding that he vacate "or dispossess proceedings will be started immediately." He sought the transfer pursuant to the exceptions contained in Section 4 of the alcoholic beverage ordinance which permits a transfer to premises within five hundred feet of another licensed premises, in the event the licensee "shall be compelled to vacate the premises for any reason that in the opinion of the Board ... was not caused by any action on the part of the licensee...."

In the Conclusions and Order the then Director determined that there was an absence of good faith on the part of Ford and that in fact the transfer from 363 Monmouth Street to 147 Wayne Street was a subterfuge and scheme to obtain a transfer to 147 Wayne Street. The Director also determined that in fact Ford was not compelled to vacate the licensed premises for a reason which was not caused by any action on his part and did not come under the exception provided for in the said ordinance. Thus, since it was held that Ford did not come under the exceptions of the aforementioned ordinance, he was only permitted under the provisions of the said ordinance to have the said license transferred to any premises, the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a plenary retail consumption license.

The evidence clearly shows and was not negated by any proofs adduced at the hearing on this petition that the transfer does not meet the ordinance distance-between-premises requirement since there are other liquor licenses within 750 feet of the location herein involved.

Ford testified at this hearing that the premises at Wayne Street have now been demolished and have been taken over by the City for purposes of redevelopment. However, since the original transfer was based upon a subterfuge, that factor is not relevant and cannot be considered in this determination.

Moreover, the Director's conclusions found as a fact that there was no public need or necessity for the transfer of the said license to 323 Monmouth Street; no evidence was presented to negate this finding.

It should be noted that the decision of the Director was appealed to the Appellate Division of the Superior Court and was affirmed on April 19, 1972. Yurchak et al. v. Jersey City and Ford (App.Div. 1970), not officially reported, recorded in Bulletin 2046, Item 1. Thereafter, upon application filed by Ford's attorney, he was given an opportunity to find other suitable premises and make application for a transfer of the said license to those premises and he was permitted to operate at the premises 323 Monmouth Street for the period therein limited. At the expiration of the said period his application for a further extension was denied.

I concur in the earlier finding that Ford does not come under the provisions of the exceptions of the subject ordinance requirements. Thus such transfer would be in violation of the ordinance and is invalid. I also have determined and find that, for all of the reasons expressed in the original Conclusions and Order, there is no basis for reversing the determination and conclusions reached in this matter.

Therefore, it is, on this 11th day of December 1972,

ORDERED that the petition requesting a reversal of the order entered herein on April 5, 1971, as affirmed, be and the same is hereby denied; and it is further

ORDERED that any license now held in custody by respondent Board for Thomas Ford, under the Supplemental Order of the Director dated May 17, 1972, or any extension of said order, be forthwith cancelled by said Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

ROBERT E. BOWER
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against
Toby's, Inc.
308-310 West Second Street
Plainfield, N. J.,
Holder of Plenary Retail Consumption License C-6, issued by the Common Council of the City of Plainfield.
Licensee, by Willian Madler, President, Pro Se.

AMENDED ORDER

BY THE DIRECTOR:

On November 30, 1972 Conclusions and Order were entered herein suspending the subject license for twenty-five days commencing Thursday, December 14, 1972 and terminating Monday, January 8, 1973 after licensee was found guilty in disciplinary proceedings of a charge alleging that on January 27, 1972 it possessed on its licensed premises three bottles of alcoholic beverages which bore labels which did not truly describe its contents in violation of Rule 27 of State Regulation No. 20. (Re Toby's, Inc., Bulletin 2080, Item 9).

The licensee has now requested that the suspension be deferred until after January 1, 1973 because a closing during the holiday season would cause it great financial loss. Good cause appearing, I shall grant the request.

Accordingly, it is, on this 7th day of December, 1972

ORDERED that my order dated November 30, 1972 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-6, issued by the Common Council of the City of Plainfield to Toby's, Inc., for premises 308-310 West Second Street, Plainfield, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m. on Tuesday, January 2, 1973, and terminating at 1:00 a.m. on Saturday, January 27, 1973.

Robert E. Bower,
Director

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against :

Tanel Corporation :
t/a Mattia's Carriage Stop :
e/s Rte 73, Evesham :
PO Marlton, N. J., :

AMENDED ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Evesham. :

.....
Licensee, Pro Se.

BY THE DIRECTOR:

On November 30, 1972 I entered Conclusions and Order suspending the subject license for twenty days commencing at 2 a.m. Friday, December 8, 1972 and terminating at 2 a.m. Thursday, December 28, 1972 after licensee pleaded non vult to a charge alleging that on June 30, 1972 it possessed on its licensed premises five bottles of alcoholic beverages, the labels of which did not truly reveal their contents, in violation of Rule 27 of State Regulation No. 20. (Re Tanel Corporation, Bulletin 2078, Item 1 (AR).)

By letter dated December 5, 1972, the attorney for the licensee has requested a deferment in the said suspension until after the holiday season because a closing at this time would cause great financial loss to the licensee. Good cause appearing, I shall grant the said request.

Accordingly, it is, on this 7th day of December, 1972

ORDERED that my order dated November 30, 1972 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-2, issued to Tanel Corporation, t/a Mattia's Carriage Stop, for premises e/s Route 73, Evesham, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, January 2, 1973, and terminating at 2 a.m. Monday, January 22, 1973.

Robert E. Bower,
Director

6. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against
 Maverick's Penn Jersey Tavern, Inc.
 t/a Maverick's Penn Jersey
 606 White Horse Pike
 Mullica Township, Devonshire,
 PO RD Egg Harbor, N. J.,
 Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Mullica.

 Licensee, Pro Se.

AMENDED ORDER

BY THE DIRECTOR:

On December 1, 1972 Conclusions and Order were entered herein suspending the subject license for fifteen days commencing Monday, December 11, 1972 upon the licensee's plea of non vult to a charge alleging that on July 24, 1972 it possessed four bottles of alcoholic beverages, the labels of which did not truly describe their contents in violation of Rule 27 of State Regulation No. 20.
 (Re Maverick's Penn Jersey Tavern, Inc., Bulletin 2078 , Item 1(AS))

The licensee has now requested that the suspension imposed herein be deferred until after January 1, 1973 because a closing during the holiday season would cause great financial loss to it. Good cause appearing, I shall grant the said request.

Accordingly, it is, on this 7th day of December, 1972

ORDERED that my order dated December 1, 1972 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Mullica to Maverick's Penn Jersey Tavern, Inc., t/a Maverick's Penn Jersey, for premises 606 White Horse Pike, Mullica Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Tuesday, January 2, 1973, and terminating at 3 a.m. Wednesday, January 17, 1973.

Robert E. Bower,
 Director

7. ACTIVITY REPORT FOR DECEMBER 1972

ARRESTS:		
Total number of persons arrested	-----	8
Licensees and employees	----- 2	
Bootleggers	----- 5	
Minors	----- 1	
SEIZURES:		
Trucks	-----	2
Alcohol - gallons	-----	3
Distilled alcoholic beverages - gallons	-----	735.65
Wine - gallons	-----	20.50
Brewed malt alcoholic beverages - gallons	-----	85.03
COMPLAINTS AND INVESTIGATIONS:		
Inspection & visits made on assigned investigations	-----	1163
Complaints assigned for investigation	-----	292
Investigations completed	-----	337
Investigations pending	-----	331
Premises where alcoholic beverages were gauged	-----	593
Bottles gauged	-----	10,038
Premises where violations were found	-----	188
Number of violations found	-----	257
License applications investigated	-----	8
Contacts made with other law enforcement agencies	-----	450
LABORATORY:		
Analyses made	-----	59
Refills from licensed premises - bottles	-----	36
Bottles from unlicensed premises	-----	4
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	10
Persons fingerprinted for non-criminal purposes	-----	136
Identification contacts made with other law enforcement agencies	-----	180
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division	-----	42
Violations involved	-----	49
Sales to minors	----- 5	Hindering - - - - - 1
Sale during prohibited hours	----- 9	No E-141-A on premises - - - - - 12
Poss. liquor not truly labeled	----- 4	No license app. on premises - - - - - 6
Gambling	----- 7	Female employees solicit. drinks - 1
Fraud & Front	----- 1	Principle stockholder convicted of crime - 1
Lewd & immoral activity	----- 2	
Cases brought by municipalites on own initiative and reported to Division	-----	17
Violations involved	-----	19
Sales to minors	----- 11	Employee w/o ident. card. - - - - - 1
Sale during prohibited hours	----- 4	Nuisance - - - - - 1
Gambling	----- 1	Employee convicted of crime - - - - - 1
Fines in lieu of disciplinary proceedings	-----	81
Total amount of fines	-----	\$3,230.00
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	28
Appeals	----- 6	Eligibility - - - - - 7
Disciplinary proceedings	----- 15	
STATE LICENSES AND PERMITS:		
Total number issued	-----	1,221
Licenses	----- 4	Wine permits - - - - - 12
Solicitors' permits	----- 60	Miscellaneous permits - - - - - 241
Employment permits	----- 166	Transit insignia - - - - - 184
Disposal permits	----- 102	Transit certificates - - - - - 7
Social affair permits	----- 445	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established	-----	26

ROBERT E. BOYER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: January 10, 1973

8. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against
 Vito Polito
 t/a Vito's Cocktail Bar
 143-145 Lincoln Avenue
 Orange, N. J.,

AMENDED ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

Vito Politi, Licensee, Pro Se.
 Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On November 30, 1972 Conclusions and Order were entered herein suspending the subject license for forty days commencing Thursday, December 14, 1972 after licensee was found guilty in disciplinary proceedings in this Division on two charges as set forth therein. (Re Vito Politi, Bulletin 2080, Item 1.)

The licensee has now requested that the suspension herein be deferred until after January 1, 1973 because a closing during the holiday season would cause great financial loss to him. Good cause appearing, I shall grant the said request.

Accordingly, it is, on this 8th day of December, 1972

ORDERED that my order dated November 30, 1972 be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Vito Politi, t/a Vito's Cocktail Bar, for premises 143-145 Lincoln Avenue, Orange, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Thursday, January 4, 1973, and terminating at 2 a.m. Tuesday, February 13, 1973.

Robert E. Bower
 Robert E. Bower,
 Director