Ambrose

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

January 17, 1966

BULLETIN 1653

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ITEM

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BULLETIN 1653

1. APPELLATE DEICISIONS - SOMERSET COUNTY TAVERN OWNERS ASSOCIATION v. BRIDGEWATER and LAWRENCEVILLE CORPORATION.

Somerset County Tavern Owners Association, Appellant, v. Township Committee of the Township of Bridgewater, and Lawrenceville Corporation, t/a "New Colony Motor Hotel", Respondents.	)	On Appeal CONCLUSIONS and ORDER

Robert W. Wolfe, Esq., Attorney for Appellant
Allgair, King & Kelleher, Esqs., by Gene G. King, Esq., Attorneys for Respondent Township Committee
Harrison and Jacobs, Esqs., by Joseph M. Jacobs, Esq., Attorneys for Respondent Lawrenceville Corporation

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Respondent Lawrenceville Corporation, t/a New Colony Motor Hotel (hereinafter Lawrenceville), the operator of a motel containing one hundred twelve sleeping rooms and a restaurant having seating accommodations for four hundred persons, obtained a plenary retail consumption license on June 21, 1965, based on plans and specifications submitted to the respondent Township Committee of the Township of Bridgewater (hereinafter Committee). The resolution granting said license was authorized under an ordinance adopted pursuant to R.S. 33:1-12.20 which states that nothing in the license limitation act "shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms." The said statute was implemented by an amendment adopted May 17, 1965 to the local limitation ordinance. The resolution adopted on June 29, 1965, which supplemented the resolution of June 21, 1965 granting the license, sets forth, in extenso, the reasons upon which such action was grounded, in compliance with Rule 8 of State Regulation No. 2. This resolution, attached to the answer of respondent Committee, was admitted into evidence.

After establishing the jurisdictional basis for its action, it states that the Committee was satisfied that the applicant is qualified; that the premises are likewise qualified for the subject license; that "the issuance of the subject license would satisfy the reasonable needs of the traveling public using the applicants facilities" and that, after considering "the growth trends in the Township, the needs of the Township and of the traveling public traveling through the Township and of the existing facilities in the Township to service such needs", the respondent

determines that in the sound judgment and discretion of a majority of this Committee such issuance is "reasonably necessary to satisfy the reasonable thirst requirement of the traveling public passing through the Township, of business visitors coming into the Township for business meetings as hereinbefore explained and to satisfy the reasonable thirst requirements of other members of the general public using the applicants facilities."

Appellant asserts in its petition of appeal that the issuance of the license to respondent Lawrenceville Corporation was erroneous for reasons which may be summarized as follows:

(a) The application and notice of publication of respondent Lawrenceville were defective;
(b) "No proof of need and necessity was shown;"
(c) That the grant of the license was "illegal, improper, contrary to law, abuse of discretion and improperly motivated."

Respondent Committee admits the jurisdictional facts and denies the substantive allegations of the said petition. By way of separate defenses it states (1) that the petition of appeal is defective because it contains no facts in support of the legal conclusions therein pleaded; (2) the petition did not detail the factual and legal basis upon which it bottomed the action; (3) that the action was lawfully taken in the exercise of its broad discretion under the statutes and ordinances in such case made and provided.

The answer filed by respondent Lawrenceville adopts the pattern of the Committee's answer and contains substantially the same defenses. These include the following specifics: (a) the respondent-applicant qualified as a licensee; (b) the applicant's premises satisfied the requirements of the aforesaid ordinance and statutes; (c) the proposed method of operation "appeared to satisfy the requirements of the ordinance and statutes and the rules and regulations promulgated by the Director of the Division of Alcoholic Beverage Control;" (d) it was reasonable to recognize the needs of the traveling public using the major highway upon which this motel is located and to satisfy the "needs of local and neighboring industrial concerns which use motels as convenient places for the overnight accommodation of business visitors;" (e) it serves the needs of local industrial concerns as well as other persons using the highway; (f) there was no showing that the said premises was "detrimental to the public interest;" (g) that the growth of the community warranted such issuance and the said issuance would not "adversely affect existing plenary retail consumption licenses."

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present testimony under oath and cross examine witnesses. Reed v. South Toms River et al., Bulletin 1628, Item 2.

The genesis of this action is as follows: Lawrenceville constructed the subject motel in 1960 at a cost of approximately $950,000. The motel contains one hundred twelve sleeping rooms and is located on Route 22 between Adamsville Road and Foothill Road in Bridgewater Township. Michael Stroukoff, the 82-year-old president of Lawrenceville, owns thirty-eight shares of a total of fifty-five issued and outstanding, and is in active management of this facility. The motel contains also a restaurant capable of seating four hundred persons, a swimming pool and all modern

facilities. The restaurant is the newest addition to this operation and was completed in 1964. The restaurant is leased to the Tom-Ann Corporation at an annual rental of $26,000.

Lawrenceville felt that it was unable to profitably operate this facility without a liquor license because many of its patrons and potential patrons desired to obtain alcoholic beverages with their meals and were using other motel facilities outside of this Township which provided the same. However, the Committee at that time had issued the maximum number of licenses under its existing ordinance. Acting in what it considered to be the best interest of the community, the Committee passed an amendatory and supplementary ordinance May 17, 1965, permitting the issuance in its discretion of a hotel or motel license to a facility containing fifty or more sleeping rooms and a restaurant seating at least seventy-five persons, in implementation of R. S. 33:1-25. Thereafter, and as noted hereinabove, the said license was issued after public hearing at which objectors were heard.

The license was issued with the special provision, however, that there shall be no renewal or transfer of the said license except to a hotel or motel containing at least fifty sleeping rooms and which shall be equipped with a public restaurant accommodating at least seventy-five persons as required by Section 1 of the amendatory ordinance passed on May 17, 1965, regulating such licenses.

Before discussing the substantive issues raised in the petition of appeal I shall first examine the procedural objections in the light of the proofs presented herein.

I

Appellant argues that the application of Lawrenceville was defective and not in legal form because the application was originally submitted unsigned and without being verified by the president or vice president. In support of this allegation the appellant called as its witness the Clerk of the Committee who testified that the application was filed on June 9, 1965. However, she did not become aware at that time that the signature of Stroukoff was missing. When this was brought to her attention, the application was thereupon forwarded to Michael Stroukoff, who returned it, properly executed, on June 16, 1965. In any event, the application was duly filed and a notice published subsequent to the filing as required by Rule 1 of State Regulation No. 2.

Counsel for appellant asserts that initial failure to sign the said application is a fatal defect rendering the Committee without jurisdiction herein, citing Maud Eisenhardt, Inc. v. Eastamption, Bulletin 1311, Item 2. In that matter the application was undated, unsigned and without affidavits. However, that case is not controlling since, unlike Eisenhardt, the proported defects in the instant matter were clearly corrected before publication and certainly before the hearing. There is no evidence to suggest that such failure to sign the application was done intentionally; the contrary in fact appears to be the case.

A similar situation was presented in Re Dunphey, Bulletin 184, Item 6. In that case notices were published but the application was not filed. The then Commissioner Burnett, in discussing its rationale stated that the reason for the rule requiring the filing of applications before publication has as its incidental merit that of "preventing applicants from 'sending up trial ballons' by mere advertising before putting up the

money necessary to filing the application." In the instant case I note that the advertising prior to filing of the application was done in good faith and without any intent to evade the rule. Since the testimony indicates that the objectors had been afforded full opportunity to be heard, the rule was thereby waived.

This Division has, in the interest of fairness, waived this rule on occasion in order to avoid sacrificing substance to form. Dorio v. East Amwell and Colligan, Bulletin 965, Item 3. Since there was no manifest prejudice to the objectors at the hearing before the Committee, this contention appears to be without merit.

II

Appellant raises the additional charge that Lawrenceville failed to answer Question 41 of the application. Question 41 asks: "Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license or permit in New Jersey or any other state which was surrendered, suspended, revoked or cancelled?" The record discloses (and respondents admit) that the officers of Lawrenceville had the controlling interest in the Fountains of Long Branch Motel (a motel operating in Long Branch in 1961, which pleaded non vult to a "refill" charge in violation of Rule 27 of State Regulation No. 20 and whose license was suspended for fifteen days (Re Fountains of Long Branch Corp., Bulletin 1435, Item 4)).

The testimony is undisputed that this matter was not brought to the attention of the Committee at the time it considered this application, as it properly should have been. Mayor Galyean was specifically questioned with respect thereto and asked whether this might have had an effect upon his determination to grant this license. He stated that he could not express an opinion because he would want to examine all the facts relating to said violation before expressing an opinion thereon. None of the other councilmen who testified at this plenary de novo hearing was examined with respect thereto.

However, there is no contention on the part of the appellant that Lawrenceville or its officers are not qualified individuals or lacking in integrity. In fact, the adopted resolution sets forth that "the applicant is qualified, and that the objections do not concern the character of the applicant and manner in which the applicant has conducted its business***."

Considering the fact that the violation occurred four years prior to this application and by another corporation (which admittedly the officers of Lawrenceville controlled), and further considering the nature of the violation, I do not feel that it is of such gravity as to require remand of this matter for further consideration by the Committee. See Vuono v. Belleville, Bulletin 163, Item 12. By this I do not mean to suggest the abandonment or abregation of the principle inherent in the strict enforcement of the alcoholic beverage law. These questions are material and must be answered fully and forthright without any intent to deceive the issuing authority.

However, the practical effect may well be that, even if the grant of this license is finally sustained, the Committee may thereafter consider whether it desires to take action at any time during the licensing year to suspend or revoke the said license for the failure to answer the question. It also has further discretion to reconsider this matter at the time of renewal. In any event, the application should be amended to include a full and complete answer to Question No. 41. Indeed, counsel for Lawrenceville indicated that he intends to take action to amend the said application at the earliest possible moment. Applications may be

so amended where the facts require, and such amendments were permitted at a later date under certain circumstances. See Vogel et al. v. Matawan, Bulletin 1043, Item 1. Such leave to amend may be granted after an appeal has been filed. Sears Roebuck & Co. v. Absecon et al., Bulletin 185, Item 10. See also Hand et al. v. Middle Township, Bulletin 1350, Item 1.

III

Appellant argues with respect to the substantive merits that the Committee did not take into consideration the question of need and necessity. It presses the view that, in order to justify the granting of an application for a plenary retail consumption license, there must be a showing of "public need and necessity", citing Lakewood v. Brandt, 38 N.J. Super. 462. It urges further that, within the concept of public necessity, consideration must be given to the lack of present facilities. In support of its contentions it produced the two councilmen who voted against the granting of the application, and Florence M. Nash, the owner and operator of Somerville Inn (a restaurant located on Route 22 in Bridgewater Township). Committeeman Rogers testified that his reasons for voting against the grant of this license were the same as those he advanced for voting against the adoption of the amendatory ordinance, namely, that, with thirteen different changes having been made in the liquor ordinance, the only sensible thing to do was to revise the entire ordinance. He also felt that the 2,500 feet distance requirement had been "well delineated" and that abridging that distance would not be in the best interest of the Township. He also felt that there were sufficient licenses in the community and no additional licenses should be granted at this time. On cross examination he reiterated that the primary reason for his negative vote on the resolution was that he believed in a consistency of action, having voted against the ordinance because he felt he was compelled to take the same position with respect to this application.

Committeeman Dobson testified that he voted against the grant of this license because he felt there were ample taverns in this community; "there are four or five in the immediate area of, let's say, one mile on 22." It was developed that Dobson abstained from voting on the amendatory ordinance because his brother is the owner of a tavern in a nearby community and he felt that there might be some conflict of interest. He admitted, however, that his brother's tavern does not have any rentable sleeping rooms connected with it, and did not offer the same kind of accommodations. Dobson insisted that he was well aware of the hotel exception in the law, but nevertheless felt that this was a matter of discretion for the issuing authority. He also admitted that there were no objections to the issuance on the part of religious, charitable or educational institutions.

Another witness produced by the appellant in support of its contention that there was no need or necessity for this license was Florence M. Nash (a resident of Bridgewater Township and the owner of Somerville Inn). In her opinion there were adequate liquor licenses within the immediate vicinity, expecially a license held by Willy Cramer, t/a The Amber Restaurant, which she estimated to be located about seven or eight hundred feet from the proposed premises. On cross examination she admitted that the several licensees whom she identified did not have sleeping rooms and that there were no hotels or motels on Route 22 in Bridgewater, other than Lawrenceville, which contained fifty or more sleeping rooms. She also admitted that, while there may be restaurants for the patrons of

the industrial plants, there were no accompanying accommodations for sleeping quarters in the aforementioned premises.

Respondents produced Mayor Galyean and Committeeman Langon in support of their position that need existed for, and public convenience would be served by, the issuance of the said license. It was stipulated that the testimony of the third committeeman who voted in support of the application would substantially be the same as that of Committeeman Langon.

Mayor Galyean endorsed the reasons set forth in the resolution and testified in great detail as to the motivation which influenced his affirmative vote. He stated that he had taken into consideration all of the evidence presented at the public hearing and the petition signed by officers and employees of the leading industries located in the community and within the immediate area. He also considered the growth of the Township and the personal representations made to him by industrial personnel. He arrived at the considered opinion that the best interests of his community required an amendment to the distance ordinance. It was this same reason that actuated his support for the enabling ordinance amendment to permit the issuance of this license to a motel. He explained that, at the public meeting at which this application was considered, no objections were raised by representatives of any religious or educational institutions; that, further, no objection was raised by the appellant or anyone else to the qualifications of the applicant. The Mayor further noted that he had been a resident of Bridgewater for approximately fifteen years, had a responsible position with a local industrial concern, and was familiar with the growth of the area. He also was familiar with this motel, and felt that a grant of the license would serve the needs of the area which he expressed as follows:

> "...it's my opinion that industries use this facility for conferences, for meetings, for housing of people associated with their type of business who reside outside of the county and the state, and that these people are housed and accommodated at this facility."

And further:

> "... there's people associated with these industries obtaining sleeping quarters at this motel. Some of the industries at the end of a conference week, they hold a banquet or something of this nature for the people before they depart for their homes. And it was expressed to me that during this time that they had to obtain transportation to take them to other facilities because most of these people desire to have a drink before they have a banquet or dinner and that this was desired."

Councilman Langon testified in a similar vein and used the following language:

> " Well, I'm of the opinion, Mr. King, that they are desirable, number one, because of the large amount of industry we have in our Town. This type of facility can be well used by the people in industry. And having worked for a local industry for some ten years I know what their problems are or have been in respect to locating people locally in motels and hotels. Most of the people that come in from out of town with the firm that I work for, well, most of them were sent to Plainfield, a considerable distance."

And further:

> "I think most people who travel, and these are business men who have been traveling, like to have a drink. I think there were motel facilities in town."

Langon, who is now serving his seventh year on the Township Committee, appeared quite familiar with the complex problems of this growing community and expressed a resolute opinion that the grant of this license would be an asset to the community and would serve its best interests.

In considering the question of "need and necessity" for the issuance of this license, it is well to set forth the applicable legal principles upon which such determination may be grounded.

Firstly, as to "need and necessity" as such, it is pertinent to repeat the observation of Judge Gaulkin in Fanwood v. Rocco, 59 N.J. Super. 306, 323, with respect to the equivalent terms of public necessity and convenience, that:

> "The terms 'public necessity' and 'public convenience' are probably as confusing and misleading when used in connection with liquor cases as the term 'abuse of discretion.' It is to be noted that these terms are not found in the statute but are the unfortunate products of our case law. Judge Clapp pointed this out in the Lakewood case, supra, at pages 464-466 of 38 N.J. Super., saying: 'An even more obvious question arises as to the significance of the term in connection with intoxicating liquors. Is there any public necessity for a tavern?' Cf. Barry v. O'Connell, supra. It would help clarify our thinking if the use of such sonorous expressions were avoided wherever possible, and instead there were hammered out a plain statement of the facts and the considerations leading to the decision...."

Secondly, it is well settled that the issuing authority's discretionary powers in matters of this kind are broad, and it has the authority to determine, in the first instance, whether a license should be granted. The burden of proving that respondent Committee abused its discretion falls upon the appellant. It must make out its case by a preponderance of the proofs. Family Finance Corp. v. Gaffney, 11 N.J. 565; O'Hara and Yuttal v. West Orange, Bulletin 1483, Item 2.

The Supreme Court, in Ward v. Scott, 16 N.J. 16 (1954) (an appeal from a zoning ordinance), has stated the following principle with respect to the issuance of these licenses:

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

Furthermore, the application here was made under the exception provided for in R.S. 33:1-12.20, which permits licenses

to be issued to hotels regardless of the number of other retail liquor licenses theretofore issued in the municipality.

It is obvious, therefore, that the Legislature considered hotel (or motel) licenses to be in a special class and clearly intended in enacting the exception to the limitation law that issuing authorities should not be proscribed by the maximum allowable quota for ordinary consumption licenses based on population. The hotel and motel industry caters to transients as well as people in the community, and it is logical to believe that the legislators were motivated by the conviction that the accommodation of such transients and the travelling public may generally serve the best interests of the community.

Bearing these basic concepts in mind, I wish to observe that, while it is true that a majority of three to two carried the day, the reasons expressed for the vote by this majority appear to me to be more substantially realistic and persuasive. I am convinced that, under the totality of the circumstances in this case, not only does a need exist for the grant of this license but that, in fact, the community would markedly benefit economically from such action. The more that people are attracted to this facility, the greater is the potential to the economy of the community.

I am also mindful of the following facts which are reflected in testimony of Mayor Galyean and Mr. Stroukoff (the president and principal officer of Lawrenceville). The Township of Bridgewater has a present population of approximately twenty-two thousand to twenty-three thousand persons -- a growth of over seven hundred per cent. in the past twenty-five years. This community is growing at a more rapid pace than Somerset County in which it is located. This motel is located on Route 22, which is one of the most heavily travelled and busiest highways in the State of New Jersey, if not the entire eastern part of this country. It would be suicidal for people to cross this highway to patronize the nearest restuarant located seven or eight hundred feet from this motel.

At least ten or twelve miles of Route 22 cross Bridgewater Township, and testimony shows that between Mountainside, on the east, and a point ten miles west of Somerville there has not been a single motel with a liquor license.

The growth of this municipality is also reflected in the large number of industries which have been accommodated within its borders. It is unnecessary to list them except to say that many of them are major national companies employing many thousands of persons. These employees have from time to time made use of hotels and motels to hold meetings and conferences, to furnish office space temporarily during strikes, to house trainees during orientation, and to house new employees while they search for permanent housing. Testimony further discloses that many of these patrons prefer accommodations in a motel which serves alcoholic beverages. According to the testimony of Stroukoff, a number of persons have expressed that desire to him and, to his knowledge, many employees of local industries have patronized a newly established Howard Johnson Motel in Plainfield (constructed in 1964) because it serves alcoholic beverages.

I am further persuaded that the majority of the respondent Committee felt that the grant of this license would encourage these patrons to return to local facilities upon the issuance of the said license. Thus the community would be better served and

its interests developed.

As articulated by Mayor Galyean at the meeting of the Committee:

> "I think the concern here is on the economy or the effect that it will have on the other businesses. I think that there is plenty of business in the Township for all the present applicants and I feel there will be plenty of business for the application that is before us this evening."

The Mayor then explained why his perspective was different from that of the preceding year:

> "Now, what has happened in the past year to make me look at the application in a different light? We have had a population increase. We have had highway expansion. We have new business come into the area.... I think, with the new industries that are proposed or will be coming into the Township, this will bring plenty of business for the other establishments in the Township. So I think the application and the request is justified, and I think my changing my mind from last year is justified, in my own mind."

Furthermore, it is my conviction that a motel liquor license, in the legislative concept, has a special and significant orientation. Thus, while of course there is no "must" in the alcoholic beverage law, nevertheless, where the issuing authority in its sound discretion grants such license, such action will be sustained on appeal. Cf. Springdale Park, Inc. v. Andover, et al., Bulletin 1649, Item 1; Blanck v. Magnolia, 38 N.J. 484.

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its action and, if so, to affirm irrespective of his personal views. Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. And he must affirm, in the absence of a manifest mistake or other abuse of discretion. Blanck v. Magnolia, supra.

More definitively expressed in another way: Where reasonable men, acting reasonably, have arrived at a determination with respect to the issuance of a license, such determination should be sustained by the Director unless it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, 59 N.J. Super. 306.

My consideration of all the evidence adduced at this plenary de novo hearing persuades me, and I am satisfied, that there was a need for the issuance of this license and the action of respondent Committee served the best interests of the community.

IV

Appellant further urges that Committeeman Langon "was biased and prejudiced." Counsel for appellant argues that Langon was employed by the appellant and by Fountains of Long Branch hotel in which the officers of respondent Lawrenceville had the controlling interest; that, when he was elected a committeeman in

1965, he introduced the amended ordinance and the resolution granting the license to Lawrenceville.

My examination of the record discloses that Langon was employed by Lawrenceville in 1960 and that he worked for a corporation known as Carter Road Corporation, which was engaged in construction and in which Stroukoff and his sons were major stockholders, for three months in 1961. Langon expressly denied that he had any business relations with these corporations after March 1961, nor did he thereafter have any business relations with the stockholders, officers or employees of Lawrenceville. He was not on the Township Committee for three years prior to January 1, 1965, and insisted that he voted for the grant of this license based solely upon his determination that it would serve the best interests of the community.

I find nothing in the evidence to suggest that Langon's vote was improperly motivated. Mere previous employment by a corporation which, four years later, makes an application for a license does not disqualify a member of the issuing authority or establish bias on his part. It has been held that even current employment of a committeeman is not a valid reason for disqualification. In Garcia v. Fair Haven, Bulletin 1149, Item 1, the appellant charged that a councilman was biased because he was employed by a company which filed a written objection to the renewal of license. It was held that, although the councilman might have abstained, the mere fact that he happens to be employed by a company which objected to renewal "does not demonstrate that he has any direct or indirect private interest in the outcome of the cause or that his participation therein should be deemed to vitiate respondent's action." The court quoted Mackler v. Board of Education of the City of Camden, 16 N.J. 362 (Sup. Ct. 1954), which said:

> "The fundamental reason that supports disqualification of a judge is personal interest in the case or the manifestation of malice or ill will towards the accused."

There is no evidence to support the allegation that Langon had any personal interest or bias in this matter. Hence this contention must be rejected. See Kramer v. Board of Adjustment, Sea Girt, 45 N.J. 268, 280-283 (1965).

V

I have examined the other matters raised in the petition of appeal and in the memorandum of counsel for the appellant and find that they are without substantial merit. I therefore find that the license was properly issued pursuant to R.S. 33:1-12.20 as implemented by the municipal ordinance adopted May 17, 1965; that such issuance was lawful; that the action of the respondent Committee was grounded upon the best interest of the community, and that there was indeed a need for the grant of the said license. Thus the respondent Committee acted in the intelligent exercise of its discretion based upon all the facts and circumstances.

In view of the aforesaid, I conclude that the appellant has failed to sustain the burden of establishing that respondent Committee's action was unlawful and improper and constituted an abuse of its discretionary authority. Rule 6 of State Regulation No. 15. I therefore recommend that an order be entered affirming said action and dismissing the appeal.

Conclusions and Order

Exceptions to the Hearer's report and argument in substantiation thereof were filed by appellant's attorney; and answers, together with arguments in support thereof, were filed by the attorneys for respondents, pursuant to Rule 14 of State Regulation No. 15.

I associate myself with that part of the Hearer's report which treats of the matters raised in the exceptions as Point I therein. That point urges that the Hearer erred in finding that the failure of respondent Lawrenceville to answer Question 41 in the application did not warrant a remand or reversal. The Hearer further determined that, since there was no challenge to the character and integrity of the individual stockholders of respondent Lawrenceville, the violation occurred four years before and the present stockholders and officers no longer had any interest in the offending corporation, all of these factors justify affirmance of the Committee's action.

In supplementing the Hearer's reasoning, I want to add that, in filling out the application, respondent Lawrenceville omitted answering Question 41, rather than inserting an untruthful answer. Michael Stroukoff (the president of Lawrenceville) testified that he was not sure which questions were to be left unanswered. Stroukoff's son, who prepared the application, failed to answer Question 41 because he was uncertain as to how the question should be answered and, as noted by the Hearer, counsel for Lawrenceville indicated that he intended to have the said application properly amended at the earliest possible moment.

Under these circumstances it seems clear that there was no apparent intent to deceive nor can any reasonable inference be drawn, from such failure, that such was the intent. In the absence of a manifest showing of a willful intent to deceive, coupled with the other elements hereinabove adverted to, the action of respondent Committee in this respect should be sustained.

In Point II of the exceptions, counsel argues that Lawrenceville committed a fraud upon the Committee because it had no intention of operating under this license, but obtained the same for the Tom-Ann Corporation. Accordingly, he concludes that the Hearer erred in failing to so find.

The facts, however, speak convincingly to the contrary. The evidence adduced reflects the fact that the restaurant was leased to the Tom-Ann Corporation, and there is nothing in the body of the lease or in the schedule which refers to or includes the bar. The schedule which defined the leased premises and facilities was produced at the continued hearing of this plenary *de novo* appeal and, after examining it, appellant's attorney made no further point with regard thereto. It is peripherally significant that the Tom-Ann Corporation never operated the restaurant and, in fact, Lawrenceville is presently operating the restaurant as well as the licensed business.

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the memoranda submitted in summation by counsel for appellant and respondents, the exceptions and argument in support thereof, the answer to the said exceptions, and the Hearer's report, I concur in the findings and recommended conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 1st day of December 1965,

ORDERED that the action of respondent Township Committee of the Township of Bridgewater be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - RAUOLY, INC. v. LAKEWOOD.

Rauoly, Inc.,
Appellant,
v.
Township Committee of the Township of Lakewood,
Respondent.

On Appeal

CONCLUSIONS and ORDER

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Julius Cohn, Esq., Attorney for Appellant
James P. Jeck, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the action of the respondent whereby on November 23, 1964 respondent denied its application for a plenary retail consumption license for a hotel premises at 500 Monmouth Avenue, Lakewood.

According to the official minutes of the meeting held on October 27, 1964, three of the five members of respondent voted to deny, two members thereof being absent.

Appellant's petition of appeal avers that the action of respondent was erroneous on the grounds that (a) appellant was entitled to the liquor license as it had complied in all respects with the statute in question pertaining to a hotel, and (b) the evidence adduced disclosed a need and a necessity for said license.

The respondent's answer denies the allegations aforementioned and contends that the determination of the respondent in denying the license was "based on the reports of the inspectors of the township which showed that six (6) rooms on the third floor had violations of municipal ordinances, eight (8) rooms on the second floor had violations, seven (7) basement rooms were unfit for use; on the evidence that Chief of Police stated an additional police problem would be created; and on the basis of the evidence presented by five (5) objectors who appeared and testified personally at the public hearing of October 27, 1964."

At the hearing on this appeal Claire Pohl testified that she is an officer of Ajack Realty Company, Inc., owner of the premises in question; that the said corporation has leased the said premises to the appellant; that at a special meeting of appellant corporation held on February 26, 1965, she was authorized to appear and testify on behalf of appellant at the hearing herein; that on October 9, 1964 the landlord was served with a notice containing forty-six alleged violations, among which was the need for painting some rooms, replacing light fixtures and miscellaneous electrical work; that on the date of the hearing before respondent only ten alleged violations remained to be remedied; that there are fifty sleeping rooms in the premises, and there is a need for a liquor license because the hotel caters to, and that 90% of its guests are, negroes; that there are three hotels in the municipality which almost exclusively cater to negro guests; that one such hotel is the "Allaben" (a liquor licensee) located directly across the street from appellant's hotel but the "Allaben" "caters to the so-called professional colored people. Ministers go there, lawyers, doctors, and so forth;" that there are three other licensed premises within a couple of blocks of appellant's premises which almost exclusively serve negro patrons.

A witness produced by the appellant testified that, at the hearing before respondent, he observed George Buckwald (a member of respondent committee, a liquor licensee and former president of the Ocean County Tavern Association) seated in the front row speaking to the attorney for the liquor dealers association which had objected to the issuance of the license in question.

Stanley E. Brower, Township Clerk, testified that he has been clerk for fifteen years, and that he knew of no instance where an application for a liquor license for a hotel had been denied; that during the past ten years, mainly because the hotels were destroyed by fire, five licenses were permitted to lapse. Mr. Brower further testified that, in addition to the "Allaben" hotel across the street from appellant's premises which has a retail consumption license, there is "a package store down the street, that is the Village Liquors, a few stores to the left of that on 4th Street is H and H package goods store, going westerly there are two licenses, the Marlboro Hotel, which has a retail consumption license, and the Lexington Bar and Grill;" that each of the said liquor establishments does not discriminate because of race; that Committeeman Buckwald did not participate in the hearing on the appellant's application. Mr. Brower also testified that a mercantile license for the hotel, indicating that there were fifty rooms, was issued to appellant but, in order to obtain said license, it was not necessary that an inspection be made to determine the accuracy of the stated number of rooms.

William C. Poole, Chief of Police, testified that his investigation indicated that all of the officers connected with the corporate appellant were qualified; that the police records disclosed that "from the 27th of November, 1964 up to and including February 13, 1965", there were sixteen calls to dispatch policemen to the appellant's premises, the largest percentage of which was because of loud noise and other types of violations such as "loiterers in the front on the corner, fight in the hotel, fight on the porch of the hotel, drunk causing a disturbance;" that in his opinion appellant's hotel is a "more permanent - permanent-type guest than transient-type guest" and, although he could not testify as to the number of children in the hotel, he has parked in the vicinity of appellant's premises "after school hours and seen numerous children going into the lobby of the hotel."

On cross examination Chief Poole testified that families with children visit other hotels in the municipality, some of which have liquor licenses. He further stated that the Marlboro Hotel, which has a liquor license, is a permanent type hotel, and in so far as he is aware, the families residing there do not have small children.

William F. Frank, Jr. (plumbing inspector) testified that on October 7, 1964 he inspected the premises in question and found eight specific violations but, on reinspection some time thereafter, all but a leak of a toilet flush elbow had been corrected.

David McKelvey (housing inspector) testified that on October 7, 1964 he made an inspection of appellant's premises and found twenty-one violations of the State Housing Code. According to McKelvey, the said violations were substantially corrected.

Harry Soden (combustibles inspector, and also known as fire inspector) testified that he too made an inspection of appellant's premises on October 7, 1964, and there were fourteen violations, but when he revisited the premises on November 23, 1964, he found that thirteen of the fourteen violations had been corrected. However, he stated there were a number of rooms that had wires running from the ceiling to bedlamps and some of the fixtures were hanging by the wires which was caused by "plugging in the extension cords." Under cross examination Mr. Soden said that, when baseboard outlets were installed, the violations resulting from the guests plugging into fixtures will be eliminated.

There is no inherent right to a liquor license. Crowley v. Christiansen, 137 U.S. 620, at p. 624; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). Also see Fanwood v. Rocco, 59 N.J. Super. 306 (App.Div. 1960). Nor is a bona fide hotel which meets the minimal requirements of the State limitation law or a municipal ordinance ipso jure entitled to a license merely because it is such a hotel. "There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed." Current v. Fredon, Bulletin 184, Item 1. See also Lincoln Avenue Corporation v. Wildwood Bulletin 540, Item 2; Weinblatt v. Asbury Park, Bulletin 815, Item 6; Szczesna v. Wildwood, Bulletin 852, Item 1; Durr and McDevitt v. Belmar, Bulletin 1086, Item 1.

As in the instant case, where there is an appeal from denial of a license, the burden of proof in establishing that public convenience and need will be best served by the issuance of the license rests upon the appellant. Gorcica v. Wallington, Bulletin 659, Item 10. Kowalski v. Harrison, Bulletin 725, Item 5. Furthermore, the judgment of the issuing authority, where supported by evidence, is entitled to great weight. Spector v. Roselle, Bulletin 703, Item 1.

It has been consistently ruled that the Director may not substitute his judgment for that of the members of the issuing authority but, rather, to determine if reasonable grounds support its decision and, if so, to affirm whatever their views and irrespective of his personal view. Redfield v. Long Branch et al., Bulletin 1027, Item 1.

Appellant emphasized the fact that George Buckwald (a member of the respondent) was seated in the front row of the room at the time the matter was heard. This in itself, without further evidence that Committeeman Buckwald participated in any way in the proceedings, is without merit. Although Mr. Buckwald's presence may have given rise to suspicion, such suspicion is not a proper substitute for proof.

In view of the aforesaid, it is unnecessary to decide whether the premises in question is a bona fide hotel containing at least fifty sleeping rooms, within the meaning of the statute applicable thereto. R.S. 33:1-12.20.

Finally, there is nothing herein to suggest that the members of the respondent who voted to deny the application for the license in question where in any manner improperly motivated. In the absence thereof, their determination, based upon proper and bona fide use of discretion, must be supported. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502, 511; Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484.

After carefully considering all the evidence herein and the memoranda of the respective counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of respondent was arbitrary, unreasonable or constituted an abuse of its discretionary power. Hence I recommend that an order be entered affirming respondent's action and dismissing the appeal.

Conclusions and Order

Exceptions to the Hearer's report and answering argument thereto were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the exceptions filed by appellant's attorney to the Hearer's report and also the answering argument submitted by the attorney for respondent.

I agree with the Hearer that, although an applicant may meet the statutory requirements of a bona fide hotel, this of itself is not sufficient to entitle it to a liquor license as a matter of right. Other factors must be considered by the local issuing authority before reaching a determination.

The testimony of the Chief of Police discloses that, betwen November 27, 1964 and February 13, 1965, there were sixteen calls for police assistance because of numerous incidents and disturbances occurring at or near appellant's premises. The calls complained of loud noises, loiterers at the corner in front of the hotel, a fight in the hotel premises, a fight on the porch of the hotel and a disturbance being cause by an intoxicated person. He stated that this exceeds the normal amount of calls for need of police in a hotel or in the immediate vicinity thereof. It is apparent from the Chief's testimony that the hotel is at present a trouble spot.

Testimony of Claire Pohl, an officer in the corporation which owns the hotel building, as well as that of the Township Clerk, is in agreement that, within a couple of blocks of appellant's hotel, there are three liquor outlets in addition to the Allaben Hotel which is located across the street from appellant's premises. Thus there appear to be enough liquor establishments to obviate a need for another liquor license in the area.

Other exceptions advanced by appellant's attorney have been adequately discussed by the Hearer in the report submitted and, thus, there is no need for repetition thereof.

Under the circumstances, I am satisfied that the action was neither unreasonable nor did it constitute an abuse of discretion on the part of respondent.

I have carefully examined the entire record herein, including the testimony of the various witnesses, the exhibits introduced in evidence at the hearing of the appeal, the Hearer's report and the recommendations included therein. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of November 1965,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

Joseph P. Lordi
Director