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

BULLETIN 2048 JUNE 26, 1972

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - PSYCHEDELIC FUN HOUSE, INC. V. ATLANTIC CITY.

Psychedelic Fun House, Inc., Appellant, v. Board of Commissioners of the City of Atlantic City, Respondent.	On Appeal CONCLUSIONS and ORDER

Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq., Attorneys for Appellant

Murray Fredericks, Esq., by Chaim H. Sandler, Esq., Attorney for Respondent
Goldsmith & Land, Esqs., by Michael M. Land, Esq., Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Board of Commissioners of the City of Atlantic City (hereinafter Board) whereby it denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-204, from Harris Aron, Trustee, to Psychedelic Fun House, Inc., appellant, and from premises 35 N. Arkansas Avenue to 12-14 North Kentucky Avenue, Atlantic City.

Appellant alleges that the Board prepared no written resolution denying the application but, at the conclusion of the hearing, indicated orally that its reason was that there was a sufficient number of licenses in the area. Appellant contends that this was erroneous and an abuse of its discretion.

The Board, in its answer, denies its conclusions were orally given and submitted a copy of the denying resolution dated September 23, 1971, the grounds of which are: (1) the area is sufficiently served with more than the necessary number of licensed premises; and (2) the welfare and convenience of the public would not be benefited by the proposed transfer.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded counsel to produce testimony and cross-examine witnesses.

Bernard S. Murphy, supervisor of alcoholic beverage control for the Board, testified that he has held such position for the past twenty-three years. At the Board's request, he caused an investigation to be made of the proposed location and its proximity to other licensed premises, which disclosed that there were ten plenary retail licenses within six hundred and eight feet of the proposed location. He added that the applicant had restructured the position of its doorway so that the entrance to the proposed premises would be beyond the minimum distance requirement of the ordinance. That change extended the distance to a large tavern-night club called the "Club Harlem" that, on occasion can accommodate fifteen hundred people. In addition to the prolixity of liquor licensees in the area, the building on the nearby corner contains a wholesale meat market whose trucks and customers fill the limited parking availabilities.

On cross examination, the witness produced a listing of all recent transfers of liquor licenses within the municipality. He was vigorously examined concerning two recent transfers, one in late 1970 and the other in early 1971, where the Board permitted transfers despite other licensees being in the vicinity. The witness however clearly differentiated between the individual circumstances.

One of the members of the Board, Meredith Kerstetter, testified that he and his colleagues felt that the proposed location would aggravate the already existing problem of an excess number of licenses in that area of the city. While most of the existing licensed premises have been there over a decade, other commercial activity has increased in the area so that the total situation does not call for another licensed premises. This was the general thinking of the Board. He admitted, on cross examination, that the Board was perplexed by parking and traffic problems surrounding the previous grant of other transfer applications and, despite such difficulties, the applications were sometimes granted.

As above noted, the "Club Harlem" is located adjacent to the proposed location, and its president, Leroy B. Williams, testified that there is no other two-block area in the city with as many liquor licenses. Another such premises would add to the bottleneck of people coming out of both places. His principal objection, however, was that the intrusion of another licensed premises would be hurtful economically.

There are just too many bars in the immediate area and another one permitted there will make them all suffer was the theme of the testimony of Clarence Nurse and Grace Daniels, both of whom are owners of licensed premises nearby to the proposed location of appellant. Other neighbors, Carrie Johnson and Thelma Anderson, testified that another licensed premises on Kentucky Avenue would destroy whatever was left of the residential character of the area; another objector, Theresa Johnson, owns a small restaurant immediately adjacent to the proposed location and she believed that a bar next to her "family-type restaurant" would be a destructive influence.

The vice president of appellant corporation, Edward F. Cipriano, testified that more than $25,000 was spent to remodel the building so that shows and entertainment could be put on; after the building was remodeled for that purpose, further changes were made so that there would be compliance with the local regulations applicable to licensed premises. It appears that the appellant initially considered the premises appropriate for burlesque shows and thereafter revised their plans, so that a cafe could be installed. To comply with the distance requirements and limitations, the front door was moved so that it would be beyond a two hundred foot zone restriction.

An investigator for the office of appellant's counsel, Milton Leventhal, testified as to the proximity of three recent place-to-place transfer approvals and indicated, on a map introduced into evidence, the location of such recent transfers approved by the city. He noted that they are as in as close proximity to existing licensed premises as is the location to which this transfer of this license is sought.

The contention of appellant that the action of respondent was erroneous is based upon the previous granting of approvals for similar transfers to other applicants, and the disapproval to this one. Other transfers were approved in crowded locations, therefore, appellant's application should have been similarly granted. The central issue in this case is whether or not the Board properly exercised its discretion in denying appellant's application for transfer. Conversely, it must be determined whether or not there was an unreasonable exercise of its discretion, thus an abuse of discretion. Simply stated "discretion" must be reasonable; conversely "abuse of discretion" is equated with unreasonableness. What is "reasonable" must, of course, be determined according to the context and circumstances of each particular case.

As in Fanwood v. Rocco, 33 N.J. 404, 414, Justice Jacobs stated:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him...Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

The Board had before it the proposal to transfer the appellant's license to an area already abounding with licensed premises. Within six hundred feet of that location exist eight other licenses. As one of the Board members testified:

> "At the conclusion of hearing all testimony both by attorneys and the objectors, the Board of Commissioners recessed and went into a conference and we came back to the Commission Room and it was the considered opinion and unanimous decision by the Board of Commissioners that they felt that... Denied the application on the ground that there were sufficient bars in the area of the applicant and it would serve no further public convenience. That's an additional bar."

Such action of the Board of Commissioners may be tested against the broad principles outlined in Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (at 307) (1970) stated as follows:

> "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 the evidence presented? If it did that ends the matter of review both by the Director

> and by the courts. We agree with the local board that there was adequate and reasonable basis in the evidence considered in light of relevant time, place and circumstances to warrant its decision denying plaintiff's application."

It is to be noted that appellant admitted moving its entrance so that its distance to the nearest licensee became two hundred and seven feet, instead of one hundred ninety-three feet. In that connection, there has been judicial comment on such efforts to compromise distance restrictions.

> "On countless occasions our courts have emphasized the sensitive nature of liquor control legislation. Local ordinances attuned to the public policy involved in this area should be fairly enforced, not regarded as nuisance hurdles to be sidestepped or evaded in the interest of a municipal policy, and not reflected in any ordinance of a contrary import...In our view, it is an impermissible evasion of the ordinance to build a physical obstruction on licensed premises for no other purpose than to make it impossible for a pedestrian-patron to effect normal entrance to the building via the nearest sidewalk--and this solely in order to inflate the walking distance to the nearest licensed premises above the ordinance minimum."

Karam et al. v. Alcoholic Bev. Control et al., 102 N.J. Super. 291, 297, 298 (App. Div. 1968).

While it is apparent that the Board was not itself constrained to grant the application because of the respositioning of the front door, having reached its determination on the basis of the area and number of licenses already in it, it is doubtful that the Board could have approved the application under the circumstances herein and the applicable ordinance. Ordinance No. 22-1967, adopted July 13, 1967 by the respondent municipality prohibits transfers within two hundred feet of an existing licensee. Karam v. Alcoholic Bev. Control, supra precludes municipal approval of a transfer of a licensee who artificially extends the distance from an existing license, and such transfers are invalid. Thus, there is no way that appellant's application could receive either municipal or administrative sanction.

Even if the proposed location were not within a restricted distance, it is apparent from the proofs and the evidence before the Board that the proposed site does not lend itself to any reasonable ground for approval. The number of bars nearby make the choice a poor one; and in addition to the several licensees there, other mercantile establishments and lack of on-street parking, heavy sidewalk pedestrian traffic, all add to the conglomerate problem. The denial by the Board was most reasonable.

Thus, appellant has failed to meet its burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the determination of the Board herein in denying the application for transfer be affirmed, and the appeal herein 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 herein, including 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 24th day of April 1972,

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

Robert E. Bower
Director

2. APPELLATE DECISIONS - SPANN v. NEWARK.

Ed Willie Spann and Irma Spann, t/a Boone Koone's Korner,

Appellants,

v.

Municipal Board of Alcoholic Beverage Control of the City of Newark,

Respondent.

On Appeal

CONCLUSIONS and ORDER

Leon Sachs, Esq., Attorney for Appellants
William H. Walls, Esq., by Matthew J. Scola, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellants challenge the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution dated October 18, 1971 revoked appellants' plenary retail consumption license for the current license period for premises 105 South Orange Avenue, Newark, effective immediately, after finding them guilty of charges alleging that on September 4, 1970 at about 7:15 p.m. they (1)allowed, permitted and suffered the possession of narcotic drugs and (2)so permitted through their employee to make arrangements with customers and patrons for the sale of the said narcotic drugs and the said employee did, in furtherance of such arrangements, sell such drugs in violation of Rules 4 and 5 of State Regulation No. 20.

Appellants allege that the action of the Board was erroneous because the findings were contrary to the weight of the evidence and constituted "an abuse of discretion."

The answer of respondent sets forth that its conclusions were based upon the factual testimony presented and it concluded "that the plenary retail consumption license should be revoked."

An order was enteredcby the Director on October 27, 1971, staying the Board's order of revocation pending determination of the appeal.

This appeal was heard de novo and was based upon the transcript of the proceedings before the Board which was supplemented by testimony at this de novo hearing offered on behalf of appellants pursuant to Rules 6 and 8 of State Regulation No. 15.

The Board relied principally upon the testimony of local Detective John F. Delaney who was assigned to the Newark Police narcotics squad. He gave the following account: Acting upon information received from an unnamed informant that a barmaid employed by appellants (and identified as Johnie May Danzey) was selling narcotics in the licensed premises, he, accompanied by three other detectives, entered the premises on September 4, 1970 at about 7 p.m. He identified himself to Ed Willie Spann (one of the appellants herein) and asked him whether the barmaid who was then on duty was named Johnie May Danzey. When he received an affirmative reply he went over to Miss Danzey and asked her where her purse was because he had been alerted by the informant that she kept narcotics in her purse. He "retrieved" the purse which was behind the bar and, upon opening it, found fifteen glassine envelopes containing alleged heroin. She was immediately arrested, charged with possession of a narcotic drug.

The detective made a field test and preliminarily determined that the glassine envelopes contained a narcotic drug known as heroin. The envelopes were then analyzed by the police chemist, and a certificate of analysis established that the contents consisted of 0.0337 grams of 8.8% heroin. The certificate of analysis was admitted into evidence by the Board over the objection of the attorney for appellants. However, subsequent to the hearing in this Division it was stipulated by counsel that this certificate would be accepted in lieu of producing the chemist to present testimony to establish the truth of the contents of said certificate.

Ed Willie Spann (one of the appellants herein) testified before the Board as well as at the de novo hearing in this Division that he has been operating these premises for the past four years and works at the premises seven days a week. Miss Danzey had been employed at these premises for the past "four or five months" prior to her arrest. He assists in tending bar when the place gets crowded during the day, and tends bar at night by himself. When he is not at the premises his wife (the co-appellant herein) is at the premises. He vigorously denied ever seeing Miss Danzey possess, sell or make any arrangements to sell narcotics at these premises. He added that when Miss Danzey was arrested he immediately discharged her although she denied selling any narcotics in the premises. His testimony was corroboated in part by his wife Mrs. Irma Spann who also categorically denied any knowledge that Miss Danzey was involved in the sale or possession of narcotics.

Miss Danzey was called to testify but, upon being advised of her Fifth Amendment rights, she refused to testify on the ground that her testimony might tend to incriminate her.

Before evaluating the testimony it should be noted that we are dealing here with a purely disciplinary measure and its alleged infraction. Such proceedings are civil in nature and not criminal (Kravis v. Hock, 137 N.J.L. 252) and proof is required by a preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The inquiry here is whether there is any evidence which, if accepted and given its fullest probative force, reasonably tends to sustain the determination of the Board herein. Hornauer v. Division of Alcoholic Bev. Control, 40 N.J. Super. 501, 504-6 (App.Div. 1956). The guiding rule is that the Board's finding must be based upon competent, reasonable and substantial evidence and must be grounded on a reasonable certainty as to probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

From my analysis of the testimony herein, it is clear that no evidence has been produced in support of the second charge, viz., that arrangements were made by anyone in or at the licensed premises to procure or obtain or sell any narcotic drugs. There is not the slightest scintilla of evidence produced by the Board to show any such sale or arrangements for sale, and it is clear that the only information about any alleged sale was obtained by the detective from an unnamed informant who was not produced at the hearing. Thus the second charge relating to the sale or arrangements for the sale of narcotic drugs lacks substance and should be dismissed.

However, with respect to the first charge, namely, that appellants "allowed, permitted and suffered" in and upon their premises the unlawful possession of and unlawful activity pertaining to narcotic drugs as defined by R.S. 24:18-2, in violation of Rule 4 of State Regulation No. 20, the evidence in support and substantiation of the same is substantial. The fact is that the employee of appellants did possess these narcotics and they were found in her purse which was located behind the bar.

The attorney for appellants maintains that, since appellants had no knowledge of their employee's possession of the narcotic drugs, they cannot be inculpated by the profligacy of her action. There is, of course, no affirmative evidence to establish that they did in fact have any knowledge of the narcotic drugs possessed by the employee. However, it is a well established and fundamental principle that licensees are responsible for the conduct of their employees and are fully responsible for their activities on licensed premises. Kravis v. Hock, supra; In re Schneider, 12 N.J. Super. 449. Rule 33 of State Regulation No. 20 provides:

> "In disciplinary proceedings brought pursuant to the Alcoholic Beverage Law, it shall be sufficient, in order to establish the guilt of the licensee, to show that the violation was committed by an agent, servant or employee of the licensee. The fact that the licensee did not participate in the violation or that his agent, servant or employee acted contrary to instructions given to him by the licensee or that the violation did not occur in the licensee's presence shall constitute no defense to the charges preferred in such disciplinary proceedings."

See Greenbrier, Inc. v. Hock, 14 N.J. Super. 39 (App.Div. 1951); Essex Holding Corp. v. Hock, 136 N.J.L. 28. As the court stated in Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888):

> "As our courts have held, the liquor traffic is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."

See Crowley v. Christensen, 137 U.S. 86; 34 L. Ed. 620.

Thus the responsibility of the employee becomes a responsibility of the licensee and does not depend upon the licensee's personal knowledge or participation. See Greenbrier, Inc. v. Hock, supra; Mazza v. Cavicchia, 28 N.J. Super. 280; 15 N.J. 498; F & A Distrib. Co. v. Div. of Alcoh. Bev. Control, 36 N.J. 34, 37 (1961).

I therefore find that the Board properly concluded that appellants were guilty of that part of the first charge which related to the unlawful possession of narcotic drugs on the licensed premises.

In view of my finding that there is no evidence to support the second charge relating to narcotics activity or the sale of narcotics in the licensed premises, I am persuaded that the penalty imposed (that is, revocation of license) was excessive under all of the circumstances in this matter.

It has generally been held by this Division that a suspension or revocation imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the municipal issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. Harrison Wine & Liquor Co. v. Harrison, Bulletin 1296, Item 2. The Director has, however, modified such penalty where it was manifestly unreasonable or unduly excessive. Rigoletti v. Wayne, Bulletin 1430, Item 2, and cases cited therein. Cf. Mitchell v. Cavicchia, 29 Super. 11; In re Larsen, 17 N.J. Super. 564.

I am persuaded that the ends of justice will best be served by the reduction of the penalty of revocation to a suspension of sixty days. It is accordingly recommended that an order be entered affirming the Board's action as it relates to the first charge herein, reversing its determination as to the second charge, and modifying the penalty from a revocation of the license to a suspension of sixty days.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report were filed by the attorney for appellants. I find that the matters contained therein have been fully considered and answered by the Hearer in his report and are lacking in merit.

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

Accordingly, it is, on this 26th day of April 1972,

ORDERED that the action of respondent be and the same is hereby affirmed with respect to its finding on the first charge, and that its finding on the second charge be and the same is hereby reversed and the said charge is hereby dismissed; and it is further

ORDERED that respondent's order of revocation of license be and the same is hereby modified to a suspension of license for sixty days; and it is further

ORDERED that my order dated October 27, 1971, staying respondent's order of revocation pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-664, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ed Willie Spann and Irma Spann, t/a Boone Koone's Korner, for premises 105 South Orange Avenue, Newark, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, commencing at 2 a.m. Thursday, May 11, 1972; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Monday, July 10, 1972.

Robert E. Bower
Director

3. APPELLATE DECISIONS - SANDALE COUNTRY CLUB, INC. V. BUENA VISTA.

Sandale Country Club, Inc.,
Appellant,
v.
Township Committee of the Township of Buena Vista,
Respondent.

On Appeal
CONCLUSIONS and ORDER

Shapiro, Brotman, Eisenstat & Capizola, Esqs., by Clement F. Lisitski, Esq., Attorneys for Appellant
Valore, McAllister & Westmoreland, Esqs., by Donald W. Ungemah, Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Township Committee of the Township of Buena Vista (Committee) whereby it denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Latona Country Club, Inc., to Sandale Country Club, Inc., (appellant) and from premises at Oak and Cumberland Road, to 10th Street, a section or area in Buena Vista, known as Newtonville.

The reason for the committee's action in denying the transfer as contained in the resolution adopted September 27, 1971, may be summarized as follows: Although there was no objection to the person-to-person transfer, the transfer was sought to an area which is residential in nature and the residents thereof expressed opposition to the proposed transfer.

Appellant alleges that the action of respondent was erroneous in that:

"a. Said license was held by Edith Q. Feeney at 10th Street and 6th Road, Newtonville, prior to its transfer to Latona Country Club, Inc., its present holder.

b. Many residents of said area were in favor of said license being on premises owned by appellant on 10th Street in Newtonville.

c. Said premises owned by appellant is appropriate and well situated for said license.

d. The nearest school is located more than 1,000 feet away from said premises.

e. The issuing authority did not object to the person to person transfer.

f. Objections from residents not desiring to have a liquor licensed premises in a community alone is not sufficient grounds to support the denial of respondent from approving said transfer allowing appellant to operate a lawful business.

g. Residents not desiring liquor licensed premises in their community may resort to the ballot procedure as provided for in the statutes and any other means which results in only a portion of the township without licensed premises is illegal and discriminatory."

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

Prior to taking oral testimony, several maps and petitions in favor of and opposed to the proposed transfer were received in evidence. Additionally, it was stipulated that "...the general area of the township in which the premises is located is a residential and agricultural area in that the Sandale area itself is a residential area."

In behalf of appellant, Ruth Averette, testified that she purchased the Sandale Country Club in the spring of 1970, and opened the facilities to groups from various cities sponsoring picnics on weekends. One-day liquor permits were secured for these events. The neighbors had no complaints concerning these affairs except for one occasion when the facilities were rented to a motorcycle club.

The Country Club grounds is comprised of almost four and one-half acres of land and the nearest neighbor is approximately three hundred or four hundred feet distant. Photographs showing the grounds and the buildings thereon were received in evidence.

Mrs. Averette testified that she had invested a substantial amount of money in the premises. The nearest school is more than one thousand feet from the premises.

It is her intention to conduct a restaurant operation catering to a predominantly black patronage. The composition of the municipality is approximately ninety percent black people. The nearest restaurant is approximately five to seven miles distant.

On cross examination the witness testified that no school children pass her property. If granted the transfer of license she would discontinue catering to groups sponsoring picnics on the property.

James Stewart, who has resided in the Township for twenty-five years and had been employed as a manager of the Sandale Country Club, testified that no one made any complaints relative to the picnics except for the picnic sponsored by the motorcycle group. The population of the Newtonville area is approximately five hundred, including children. It was his view that there was a need for the proposed facility with a liquor license so that the residents could use it as a place to socialize.

Willie Averette, husband of Ruth Averette, testified that he and his wife are the co-owners of the Sandale Country Club. In response to the question concerning whether or not school children normally use Tenth Street to go back and forth to school, the witness replied "I imagine some of them. Some of them rides buses."

McKinley Jameson, who has resided in Newtonville more than ten years testified that he is familiar with the subject area and that there is a need in that area for a restaurant where liquor is served. The closest restaurant where liquor is served is approximately five miles distant.

It was stipulated that Julio C. Correa, Willette T. Monroe and Austin Johnson, all of whom were present at the hearing, if called to testify, would testify that (1) they were familiar with the area involved herein; (2) that there is a need in the area for a club where food and liquor would be served; and (3) that there were no complaints with regard to the picnic socials held at the premises.

In behalf of respondent, Charles Bylone, Township Clerk and secretary of its zoning and planning boards, testified that the subject premises are located in an area zoned residential. The appellant's premises to which it is proposed to transfer the license is thirteen hundred and twenty feet distant from the location of the prospective transferor, Latona Country Club, where the license was formerly operated by Feeney's. The distance between appellant's premises and the school is approximately twelve hundred feet. Some of the school children must pass in front of appellant's premises. Within a quarter mile radius of appellant's premises there are approximately forty residences. There are no commercial establishments in the area. The closest restaurant is three miles distant. The nearest liquor licensed premises is three miles distant.

On cross examination the witness testified that no formal complaints had been made concerning the operation of the Feeney tavern since 1945. No formal complaints were lodged against Mrs. Averette concerning the week-end picnics held on the Sandale Country Club grounds.

Byron Darby, Sr., who has resided in a home which he owns on Tenth Street, Newtonville, since 1964 and which is located approximately four hundred seventy feet distant from the Sandale Country Club, testified that he is opposed to the proposed transfer of the liquor license because when he invested his life savings in the home, it was located in a residential community and he wanted it to remain the same. He counted approximately forty-three to forty-five homes within a quarter mile radius of the Sandale Country Club.

On cross examination, Darby testified that when he moved to Sandale in 1964, Feeney's tavern which was located not quite a quarter mile distant, was in operation.

Edgar M. Richard, who purchased a home on Tenth Street, diagonally across from the Sandale Country Club in 1962, testified that he is opposed to the transfer of the liquor license because he moved to the area seeking peace. Children must proceed past the Sandale Country Club grounds going to and from school.

Reverend Bridgeford testified that he is opposed to the proposed transfer of license because a "number" of the community residents that he had spoken to were of the opinion that it would change the community. The exposure of the youths that must pass the property might influence the homeowners to relocate.

It appears that the crucial issue to be determined is whether the Township Committee acted reasonably and in the best interests of the community.

Preliminarily, I observe that it is a firmly established principle that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), aff'd. 33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Council in either approving or denying an application for such transfer may not be reversed by the Director unless he finds "the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

> "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... 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)."

In the recent case of Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

> "The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

There is no merit to appellant's contention that the residents not desiring liquor licensed premises in their area or community may resort to a referendum and any other means which results in only a portion of the township without licensed premises is

illegal and discriminatory. This contention is contra to the holding of the Appellate Division in Fanwood v. Rocco, supra, at p.323, wherein the court succinctly stated:

> "The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for the municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

It is noteworthy that the Supreme Court in Fanwood v. Rocco, 33 N.J. at p. 415, expressed its sentiment, as follows:

> "The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

The above principles expressed by the courts also effectively answer appellant's contention that the objections of residents does not justify the municipality's action in denying a transfer.

In the subject case, it is apparent, and I find that the Committee honored the sentiments of the neighbors who voiced their opposition to the transfer. Absent improper motivation, which has neither been alleged nor evidenced, the action of the local issuing authority, based upon proper and bona fide use of its lawful discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra.

I find all other of appellant's contentions likewise to be without merit.

After considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was unreasonable, erroneous, or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Committee and dismissing the appeal.

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 herein, including transcript of the testimony, the exhibits, the memoranda of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 26th day of April 1972,

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

Robert E. Bower
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS GAME) - LICENSE SUSPENDED FOR 90 DAYS, LESS 18 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
Kay DeGregoda & Charles J. Drexler, Jr. 163 Claremont Avenue Jersey City, N. J.,	) CONCLUSIONS and
Holders of Plenary Retail Consumption License C-222, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	) ORDER

James F. O'Connor, Esq., Attorney for Licensees
Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on May 20, 25, 27 and June 6, 1971 their predecessor in interest Mary E. Appleman, Executrix of the Estate of Harold Vincent Appleman, t/a Claremont Tavern, with which the present licensees were then associated, permitted gambling, viz., participation rights in a lottery commonly known as the "numbers game" on the licensed premises, in violation of Rule 6 of State Regulation No. 20.

Absent prior record, the license will be suspended for ninety days, with remission of eighteen days for the plea entered, leaving a net suspension of seventy-two days. Re Saluto, Bulletin 2025, Item 5.

Accordingly, it is, on this 27th day of April 1972,

ORDERED that Plenary Retail Consumption License C-222, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Kay DeGregoda & Charles J. Drexler, Jr., for premises 163 Claremont Avenue, Jersey City, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1972, commencing at 2 a.m. Thursday, May 11, 1972; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2 a.m. Saturday, July 22, 1972.

Robert E. Bower,
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Anna Pross & Edna Orr
t/a Joe's Tavern
25-01 Broadway
Fair Lawn, N. J.

Holders of Plenary Retail Consumption License C-2 issued by the Borough Council of the Borough of Fair Lawn.

CONCLUSIONS and ORDER

Van Norde, Boyle, Smock & Sullivan, Esqs., by George M. Sullivan, Esq., Attorneys for Licensee.
Dennis M. Brew, Appearing for Division.

BY THE DIRECTOR:

Licensees plead guilty to a charge alleging that on December 10, 1971, they sold alcoholic beverages to a minor, age 15, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Scavone, Bulletin 1942, Item 5.

Accordingly, it is, on this 27th day of April 1972,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Fair Lawn to Anna Pross & Edna Orr, t/a Joe's Tavern, for premises 25-01 Broadway, Fair Lawn, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. on Thursday, May 11, 1972 and terminating at 3:00 a.m. on Monday, June 5, 1972.

Robert E. Bower
Director

16. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - SALE AT LESS THAN FILED PRICE - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Thomasina Ziemba
t/a Tommy's Family Liquor
613 Main Street
Paterson, N. J.

Holder of Plenary Retail Consumption License C-38 issued by the Board of Alcoholic Beverage Control for the City of Paterson

CONCLUSIONS and ORDER

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Licensee, pro se
Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to two charges alleging that on March 22, 1972, (1) she sold alcoholic beverages to a minor, age 17, in violation of Rule 1 of State Regulation No. 20, and (2) she sold five quart bottles of malt liquor at less than the filed price thereof, in violation of Rule 5 of State Regulation No. 30.

Absent prior violation, the license will be suspended for twenty days on the first charge (Re Druda, Bulletin 2033, Item 4) and for ten days on the second charge (Re Bergenfield Liquor Shop, Inc., Bulletin 1934, Item 11) making a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 26th day of April 1972,

ORDERED that Plenary Retail Consumption License C-38 issued by the Board of Alcoholic Beverage Control for the City of Paterson to Thomasina Ziemba, t/a Tommy's Family Liquor, for premises 613 Main Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. on Tuesday, May 9, 1972 and terminating at 3:00 a.m. on Saturday, June 3, 1972.

Robert E. Bower
Director