

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

January 27, 1964

BULLETIN 1546

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - RIDGEMONT LIQUORS, INC. v. PARK RIDGE.
2. DISCIPLINARY PROCEEDINGS (Paterson) - LEWDNESS AND IMMORAL ACTIVITY (APPARENT HOMOSEXUALS) - SALE TO MINORS - LICENSE SUSPENDED FOR 120 DAYS, LESS 5 FOR PLEA.
3. APPELLATE DECISIONS - SAWICKI v. WALLINGTON.
4. APPELLATE DECISIONS - DAVDOR, INC. v. NEWARK.
5. APPELLATE DECISIONS - THE THREE MUSKETEERS, INC. v. PATERSON.
6. STATE REGULATIONS - REGULATION NO. 34 - INTERPRETATION RE SALE TO AIRLINE PLENARY RETAIL TRANSIT LICENSEES AT LESS THAN FILED PRICE.

PLENARY RETAIL TRANSIT LICENSEES - SALE TO AIRLINE LICENSEES AT LESS THAN WHOLESALE PRICE FILED.
7. STATUTORY AUTOMATIC SUSPENSION (Newark) - ORDER LIFTING SUSPENSION.
8. DISCIPLINARY PROCEEDINGS (Hoboken) - INDECENT LANGUAGE AND CONDUCT - GAMBLING (WAGERING) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
9. STATUTORY AUTOMATIC SUSPENSION (Paterson) - ORDER LIFTING SUSPENSION.
10. DISCIPLINARY PROCEEDINGS (North Bergen) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (Passaic) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

New Jersey State Library

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

January 27, 1974

BULLETIN 1546

1. COURT DECISIONS - RIDGEMONT LIQUORS, INC. v. PARK RIDGE.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-952-62

RIDGEMONT LIQUORS, INC.,)
a New Jersey corporation,)
Plaintiff-Appellant)
vs.)
BOROUGH OF PARK RIDGE,)
Defendant-Respondent.)

Argued December 16, 1963 -- Decided December 26, 1963

Before Judges Gaulkin, Foley and Lewis.

Mr. James A. Major II argued the cause for
the plaintiff (Messrs. Major & Major, attorneys).

Mr. Aaron W. Nussman argued the cause for the
defendant.

PER CURIAM.

Plaintiff is a holder of a Plenary Retail Distribution
License (commonly known as a package store license) issued by
the Borough of Park Ridge.

A Park Ridge ordinance provides that:

"No person holding a plenary retail distribution
license shall permit the sale of alcoholic
beverages in or upon any premises in which any
other merchandise business is carried on * * *."

Plaintiff admits that N.J.S.A. 33:1-12, subsection 3a,
authorizes municipalities to enact ordinances to forbid the
sale of alcoholic beverages by the holder of such a license
"in or upon any premises in which any other mercantile business
is carried on, except that any such ordinance * * * shall
for any other exception, and we find no justification for
reading into it the construction advanced by plaintiff.

The judgment is affirmed.

2. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY
(APPARENT HOMOSEXUALS) - SALE TO MINORS - LICENSE SUSPENDED
FOR 120 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

PER-MAC CORP.
t/a ALL FAIR TAVERN)
13 Fair Street)
Paterson, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-265, issued by the Board of)
Alcoholic Beverage Control for the)
City of Paterson.)

Licensee, by Philip F. Perrotta, Secretary-Treasurer, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that
(1) on May 24-25, June 1-2, 8-9 and 15-16, 1963, it permitted
apparent homosexuals upon the licensed premises, in violation
of Rule 5 of State Regulation No. 20, and (2) on June 16, 1963,
it sold drinks of alcoholic beverages to four minors, three age
19 and one age 20, in violation of Rule 1 of State Regulation
No. 20.

Reports of investigation disclose that on the four
occasions indicated in the first charge, the total patronage
varied between thirty-five and forty-five, of whom ten to
thirty-three were apparent male and female homosexuals, and that
on several of the occasions, there occurred overt acts of
indecent conduct and language by these apparent homosexuals.

Absent prior record, the license will be suspended
on the first charge for one hundred days (Re Markowitz,
Bulletin 1371, Item 5; Re Feldman, Bulletin 1145, Item 1) and
on the second charge for twenty days (Re Beacon Manor Hotel, Inc.,
Bulletin 1474, Item 7) or a total of one hundred twenty days,
with remission of five days for the plea entered, leaving a net
suspension of one hundred fifteen days.

Accordingly, it is, on this 25th day of November, 1963,

ORDERED that Plenary Retail Consumption License C-265,
issued by the Board of Alcoholic Beverage Control for the City of
Paterson to Per-Mac Corp., t/a All Fair Tavern, for premises 13
Fair Street, Paterson, be and the same is hereby suspended for
one hundred fifteen (115) days, commencing at 3:00 a.m. Monday,
December 2, 1963, and terminating at 3:00 a.m. Thursday,
March 26, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. APPELLATE DECISIONS - SAWICKI v. WALLINGTON.

VINCENT SAWICKI, t/a V & Z)
 TAVERN,)
 Appellant,)
 v.)
 MAYOR AND COUNCIL OF THE)
 BOROUGH OF WALLINGTON,)
 Respondent.)

ON APPEAL
 CONCLUSIONS
 AND ORDER

 Joseph A. Banas, Jr., Esq., Attorney for Appellant.
 Robert D. Gruen, Esq., by Karl Z. Sosland, Esq., Attorney for
 Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent which on August 13, 1963, unanimously suspended appellant's plenary retail consumption license C-32 for a period of sixty days after finding him guilty on a charge alleging that on May 28, 1963, he sold, served and delivered an alcoholic beverage to a minor and permitted said minor to consume such beverage in and upon the licensed premises, in violation of Rule 1 of State Regulation No. 20. Appellant's premises are located at 215 Paterson Avenue, Wallington.

"When the appeal was filed the Acting Director entered an order dated August 29, 1963, staying respondent's order of suspension until further order herein.

"Appellant in his petition of appeal alleges that respondent's action was erroneous in that inadmissible testimony and statements were received in evidence and that the determination was arbitrary and the penalty harsh.

"Respondent in its answer denies appellant's allegation and contends that its decision was predicated upon the factual testimony adduced before it.

"When the matter came on for hearing the parties hereto agreed to present the appeal on the transcript of the proceedings before the Mayor and Council as provided by Rule 8 of State Regulation No. 15. The transcript was received in evidence and marked Exhibit R-1.

"It appears from the transcript that Patrolmen Robert Hettel and Stanley Remiszewski, John --- (the minor involved) and Maureen --- were called as witnesses to substantiate the charge, and that Rose Ragauckas and William Schmitt were called as witnesses for Vincent Sawicki (the licensee, who testified on his own behalf).

"The testimony of the patrolmen shows that on May 29, 1963, the Passaic General Hospital notified them that John had suffered injuries resulting from a fight on the previous evening;

that at their request John appeared at headquarters and gave a written statement respecting the incident which occurred in the licensee's premises on May 28, 1963; that thereafter they obtained written statements from Maureen --- who was present when the fight ensued, and from William Schmitt (the alleged assailant). The statements of John --- and Maureen --- were marked S-2 and S-3 for identification.

"John's testimony shows that he was eighteen years old on the date alleged in the charge; that between 10 and 10:30 p.m. he arrived at the licensed premises wherein he ordered and consumed two glasses of beer which were served by the licensee who required no written representation as to his age. His testimony further shows that during his stay in the licensed premises he engaged in a fight with William Schmitt which resulted in injuries to his jaw.

"Maureen's testimony shows that she arrived at the licensed premises at 10:30 p.m. and remained until 11:45 p.m.; that during her stay she saw John --- who 'was high even before he came in the bar' and that he had nothing to drink at the bar except soda. She also testified respecting the fight and the circumstances leading up to it, and stated that the only beverage she was served was soda. The prosecuting attorney then confronted her with her statement in which she said that the licensee had served her blackberry brandy which she drank 'to see what it taste like' and that, after some of the boys broke up the fight, 'John went and had another drink or it was the same one.' Her statement was marked S-3 in evidence, after which the prosecutor rested.

"The testimony of Mrs. Ragauckas shows that she is employed as a barmaid by the licensee and works from 1 p.m. to 9 p.m.; that on the date alleged John --- entered the tavern before she had finished her tour of duty, at which time she served him a bottle of soda; that the licensee relieved her at about 9 p.m. and that she seated herself at the customer's side of the bar next to John --- whom she engaged in conversation, and that at no time was John served alcoholic beverages on the licensed premises.

"The testimony of William Schmitt shows that on the date alleged he entered the licensed premises at about 10 p.m., and that John --- was drinking at the bar when he came in but he couldn't tell what was in his glass. On cross examination the prosecuting attorney confronted him with his statement to the police, in which he stated, among other things, 'John and his partner were drinking beer, the beer already was on the bar. He had a few beers in my presence. He appeared drunk to me, that is Johnnie, and his partner also did not feel any pain.' The statement was marked Exhibit S-4 in evidence, and thereafter Schmitt stated, 'I want to say something about this statement. The reason why I jumped to the conclusion that it was beer, because I wasn't under oath and I felt I could say it openly, and now I'm under oath and I won't condemn myself to saying it.'

"The testimony of the licensee shows that about seven months ago John --- and his father came into the tavern, at which time the father insisted that his son be served a drink, stating that he would be responsible; that he (the licensee) refused to

serve him, saying 'You are his father or not, if he no show me identification I no serve him drink;' that John --- thereafter occasionally came into the tavern with friends but was refused service, and that on the date alleged he didn't serve John --- any alcoholic or non-alcoholic beverages.

"In Mazza v. Cavicchia, 15 N.J. 498, 509 (1954), the late Chief Justice Vanderbilt enunciated the principle that:

'...In a hearing before an administrative tribunal technical rules of evidence are not controlling and the erroneous admission of evidence in such a proceeding will not cause a reversal unless the evidence erroneously admitted formed the basis for the decision of the administrative tribunal, Andricsak v. National Fireproofing Corp., 3 N.J. 466, 471 (1950)....'

"While it appeared herein that the Mayor admitted evidence which did not in any way tend to establish the truth of the charge, it is obvious from his remark 'We are not trying the case on the fight anyway' that the irrelevant evidence erroneously admitted did not form the basis of the Council's decision.

"Having carefully examined all of the evidence adduced in the proceedings below, I find that there is substantial evidence in the case to support a finding of the licensee's guilt of the charge preferred against him. 'The choice of accepting or rejecting the testimony of witnesses rests ... with the administrative agency....' Hornauer v. Division of Alcoholic Beverage Control, 40 N.J. Super. 501, at 506.

"As to penalty: It has heretofore been held that the suspension imposed in a local disciplinary proceeding rests in the first instance within the sound discretion of the local issuing authority, and the power of the Director to reduce or modify it will be sparingly exercised and only with the greatest caution. I find no basis for modification of the suspension imposed in this case. See Fronczak v. Gloucester City, Bulletin 1383, Item 2, and cases cited therein.

"In view of the aforesaid, I conclude that the truth of the charge was established by a fair preponderance of the believable evidence, and that the penalty imposed, under the circumstances, is not excessive.

"I recommend, therefore, that an order be entered affirming the action of respondent Mayor and Council and dismissing the appeal."

No written exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the proceedings before respondent Mayor and Council, the transcript of the proceedings on appeal, the exhibits, the briefs submitted by the attorneys for the parties hereto and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of December 1963,

ORDERED that the action of respondent Mayor and Council be and the same is hereby affirmed; that the appeal herein be and the same is hereby dismissed; that my order entered on August 29, 1963, staying respondent's order of suspension be and the same is hereby vacated and that the suspension of sixty (60) days heretofore imposed by respondent Mayor and Council be and the same is hereby reimposed and reinstated to become effective at 3:00 a.m. Monday, December 16, 1963, and to terminate at 3:00 a.m. Friday, February 14, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. APPELLATE DECISIONS - DAVDOR, INC. v. NEWARK.

DAVDOR, INC., t/a DAVDOR WINES	)	
& LIQUORS,	)	
	)	
Appellant,	)	
	)	ON APPEAL
v.	)	CONCLUSIONS
	)	AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY OF	)	
NEWARK,	)	
	)	
Respondent.	)	

Harry Wolf, Esq., Attorney for Appellant.
Norman N. Schiff, Esq., by Paul E. Parker, Esq., Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant, holder of a plenary retail consumption license (with "broad package privilege"), operating its business at 302 Mulberry Street and 2 Mulberry Place, Newark, appeals from a denial by respondent of its request to sell alcoholic beverages by the glass or open receptacle for consumption on the licensed premises.

At a meeting of respondent in May of 1961 appellant's application for license transfer was granted. At the time a discussion took place between the attorney for appellant and the then chairman of respondent respecting the advisability of limiting operation under the license only to sale of alcoholic beverages in original containers for off-premises consumption. At the meeting in question appellant's attorney stated that it was appellant's then intention to limit its operation only to sale of alcoholic beverages in original containers for off-premises consumption, but added that appellant would not waive any rights granted to it by the plenary retail consumption license.

On September 18, 1963, appellant requested leave to utilize the full privileges conferred by its license to sell alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises as well as sale of alcoholic beverages in original containers for consumption off the licensed premises. Appellant received a letter dated September 26, 1963,

from the secretary of respondent which reads as follows:

"This is to advise you that this Board, at its meeting held on Wednesday, September 18th, considered your request to change your business operation under the license from a Package Store to both Package Store and Tavern, and after full consideration and deliberation of all the facts, denied the request at their Executive Conference and Public Meeting of September 25th, 1963."

Special conditions are authorized by R.S. 33:1-32 to be imposed "to the issuance of any license." It has been ruled by the Division that the intendment and effect of said section is to authorize special conditions not only upon original issuance or renewal of a license but transfers as well, without the necessity of a hearing being afforded the licensee or transferee against whom special conditions are imposed. The Ebony Corp. v. Trenton, Bulletin 958, Item 1.

With respect to the matter under consideration no special condition was imposed when the 1960-1961 license transfer was granted. If such a special condition had been imposed, it would necessarily have been disapproved as in derogation of R.S. 33:1-12, par. 1, and thus would have been unenforceable. See South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105.

Where a licensee has represented or expressed a desire to the issuing authority before issuance, renewal or transfer of a "broad package privilege" plenary retail consumption license (R.S. 33:1-12.23 et. seq.) to limit the operation under the license to sales of alcoholic beverages in original containers for off-premises consumption, such representation or expressed desire, if breached or disregarded, may be considered by the issuing authority when an application is filed to renew the license. In the present case, however, appellant gave no assurance to the respondent that in the future it would not utilize full privileges which the type of license permits. Clearly, no deception was practiced on respondent in order that the transfer of the said license be approved.

I find that appellant acted in complete good faith. I find that respondent's action, taken on September 25, 1963, purporting to restrict appellant's operation under the license to sales of alcoholic beverages in original containers for off-premises consumption by denying appellant's request and thereby conditioning the license against sales of alcoholic beverages by the glass or other open receptacle for on-premises consumption was in derogation of law. I recommend, therefore, that respondent's action be reversed.

Conclusions and Order

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the transcript of the proceedings held before the respondent Board, the arguments advanced by the attorneys for the parties hereto at the hearing on appeal and the Hearer's Report, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 17th day of December,
1963,

ORDERED that the action of respondent Board be
and the same is hereby reversed.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. APPELLATE DECISIONS - THE THREE MUSKETEERS, INC. v. PATERSON.

THE THREE MUSKETEERS, INC.,
t/a THE NITE SPOT,

Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL FOR THE CITY OF
PATERSON,

Respondent.

)
)
) ON APPEAL
) CONCLUSIONS
) AND ORDER
)
)
)

Emil Weissner, Esq., and Lawrence Diamond, Esq., Associate
Counsel, Attorneys for Appellant.

Theodore D. Rosenberg, Esq., by William J. Rosenberg, Esq.,
Attorney for Respondent.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant appeals from the unanimous action of
respondent on November 6, 1963 in denying a person-to-person
and place-to-place transfer of Plenary Retail Consumption
License C-231 from Kenmar Corp., t/a Candy Twist Lounge, to
The Three Musketeers, Inc., t/a The Nite Spot, and from
premises 74 Hamilton Avenue to 534 East 18th Street, Paterson.

Appellant alleges in its petition of appeal that
the action of respondent was erroneous and should be reversed
for the following reasons:

"Same was arbitrary, capricious, unreasonable,
unjust, unconstitutional and prejudicial to the
applicant without any evidence or basis of trial;
that the action of the Board was arbitrary, capricious
and unreasonable and that the action of the Board was
tainted because of bias, passion, prejudice and
mistake on the Board's part or the individual members
thereof, and because of undue and unjust pressure
placed upon the Board."

The members of respondent were of the opinion that
there was no necessity for a liquor outlet in the area.

It was stipulated by the parties hereto that the
distance between the present and proposed licensed premises is
approximately three quarters of a mile.

Two of the six objectors to the transfer who had appeared before respondent appeared at the instant hearing and voiced objections thereto.

There is no dispute that since 1934, including the current licensing period, a plenary retail consumption license had been issued for the proposed premises. However, the current license issued to The Nite Spot, a corp. for the premises in question was seized by the Internal Revenue Bureau and at present there is no operation at said premises.

Appellant contends that the transfer should have been granted because 534 East 18th Street was licensed continuously from the time of Repeal. It has been ruled that prior use as a tavern does not, per se, warrant the transfer of a liquor license to said premises. Re Konesky, Bulletin 217, Item 7. Even though there may be no licensed premises in the immediate area to which the transfer is sought, no person is entitled to a transfer into that area as a matter of law. Zicherman v. Driscoll, 133 N.J.L. 586; Bumball v. Burnett, 115 N.J.L. 254.

It has long been established that the number of licenses which should be permitted in any particular area, and the determination as to whether or not the license will be transferred to a particular location, are matters within the ~~sole~~ ^{sound} discretion of the issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine if proper cause exists for its opinion and if so to affirm irrespective of his personal views. Rothman v. Hamilton Township, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Co. v. West Orange, Bulletin 1155, Item 3. This view is stated in Ward v. Scott, 16 N.J. 16 (1954) (cited in Fanwood v. Rocco, et al. 59 N.J. Super. 306) wherein the Supreme Court dealt with an appeal from a zoning variance which had been granted by a municipality:

"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). Where, as here, the application...has been given careful and conscientious consideration by the zoning board and the town council and has been acted upon by both of them in strict conformity with the procedural and substantive terms of the statute, the ultimate interests of effective zoning will be advanced by permitting the action of the municipal officials to stand, in the absence of an affirmative showing that it was manifestly in abuse of their discretionary authority."

This is particularly important in the present case which concerns the question of liquor regulation and the municipality did not grant but denied the application. The action of the local issuing authority 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 Association, Inc. v. Hoboken, 135 N.J.L. 502, at 511.

The contention by appellant in its petition of appeal that the action of respondent in denying the transfer was the result of bias, passion, prejudice, mistake and submission to undue and unjust pressure was not substantiated by appellant. Furthermore, there was no evidence whatsoever which indicated that respondent was improperly motivated when it failed to approve appellant's application for transfer.

After reviewing the testimony and the exhibits including the summation by the attorneys for the parties hereto, I find that the respondent's unanimous action was neither arbitrary, capricious, unreasonable or an abuse of the discretion vested in it.

I conclude that the appellant has failed to sustain the burden of proof necessary to establish that the action of respondent was erroneous so as to warrant reversal thereof. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming respondent's action and that the appeal herein be dismissed.

Conclusions and Order

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the testimony taken, 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. Hence I shall enter an order as recommended.

Accordingly, it is, on this 23rd day of December 1963,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. STATE REGULATIONS - REGULATION NO. 34 - INTERPRETATION
RE SALE TO AIRLINE PLENARY RETAIL TRANSIT LICENSEES AT LESS
THAN FILED PRICE.

PLENARY RETAIL TRANSIT LICENSEES - SALE TO AIRLINE
LICENSEES AT LESS THAN WHOLESALE PRICE FILED.

December 10, 1963

N.J. Wine & Spirit Wholesalers Association
Newark 2, N. J.

Gentlemen:

This acknowledges your letter of November 14, 1963 in which you state that New Jersey wholesale licensees wish to sell to airlines holding plenary retail transit licenses, alcoholic beverages in containers of various sizes, principally gallons and half-gallons of distilled spirits, at a national price schedule established by the various importers, distillers and vintners, lower than the prices filed and published in the quarter-annual Wholesale Price List, possible because such sales are not subject to state tax.

It appears from your letter that there is a substantial demand for such sales, principally at Newark Airport, by reason of a change in the methods employed by the airlines in serving alcoholic beverages to their passengers. It further appears that, in at least one other jurisdiction, the practice is presently in effect.

You point out that "No control problem seems to be involved. Service is not made in or over New Jersey and no more than two drinks are permitted a passenger between destination points. There is no discrimination against other retail licensees because the Airlines are not in competition with any other class of retailer. No additional burden will be placed on the Division personnel."

Rule 1 of State Regulation No. 34 provides, among other things, that no wholesaler shall deliver to any retailer any alcoholic beverages, other than malt alcoholic beverages, except at the price thereof, less discount, if any, listed by the wholesaler in the then currently effective quarter-annual Wholesale Price List. This is to guard against preferential treatment of a particular retailer or retailers to the detriment of the other retailers and to avoid the evils of the "tied house" interdicted by R.S. 33:1-43.

However, while a plenary retail transit licensee sells to consumers and thus is classified as a "retail licensee", sales by such licensees are made to a limited portion of the consuming public under conditions of transit which involve no real or actual competition between such licensees and other retail licensees who deal with the public generally at a fixed location. The distinction between transit licensees and other retailers has been recognized for many years. Cf. Bulletin 271, Item 3, wherein it was ruled that, to be applicable to transit licensees, the underlying reason for a rule directed generally to retail licensees is determinating whether it is so applicable.

In view of all of the facts and circumstances, it is

my opinion that the contemplated sales of alcoholic beverages to airline plenary retail transit licensees below the prices filed and published in the Wholesale Price List are not within the intendment of the prohibition contained in Rule 1 of State Regulation No. 34. Hence such sales may be made as proposed.

Very truly yours,

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #237	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-93,	)	
issued by the Municipal Board of	)	
Alcoholic Beverage Control of the	)	ON PETITION
City of Newark to	)	ORDER
THE ATOM CLUB, INC.	)	
t/a MIRROR LOUNGE	)	
62 Adams Street	)	
Newark, N. J.	)	

Rocco F. Senna, Esq., Attorney for Petitioner.

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on November 27, 1963, Walter Diaz, former president of the licensee-petitioner, was fined \$250 and placed on probation until the fine was paid after being found guilty in the Essex County Court of a charge of sale of alcoholic beverages to two minors on December 30, 1962, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term, notwithstanding the fact that Diaz was no longer a director, officer or stockholder of the licensee corporation at the time of his conviction. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for fifteen days beginning May 6, 1963 and ending May 21, 1963, after the licensee was found guilty of a charge in disciplinary proceedings alleging the same sale to the minors. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Konrad, Bulletin 1512, Item 14.

Accordingly, it is, on this 13th day of December, 1963,

ORDERED that the statutory automatic suspension of said license C-93 be and the same is hereby lifted, effective immediately.

EMERSON A. TSCHUPP
ACTING DIRECTOR

8. DISCIPLINARY PROCEEDINGS - INDECENT LANGUAGE AND CONDUCT -
 GAMBLING (WAGERING) - SALE IN VIOLATION OF STATE REGULATION
 NO. 38 - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

MARY J. ROGERS
 202 Hudson Street
 Hoboken, N. J.

Holder of Plenary Retail Consumption
 License C-143, issued by the Municipal
 Board of Alcoholic Beverage Control of
 the City of Hoboken.

CONCLUSIONS
 AND ORDER

 Andrew F. Batistich, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on November 2-3, 1963, she (1) permitted foul, filthy and obscene language and conduct on the licensed premises, in violation of Rule 5 of State Regulation No. 20, (2) permitted wagering in connection with the playing of a bowling machine game on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (3) on Sunday, November 3, 1963, sold twelve cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for ninety days, effective August 6, 1957, for sale to minors and conducting the licensed business as a nuisance. Re Rogers, Bulletin 1186, Item 4.

The prior record of suspension for dissimilar offenses occurring more than five years ago disregarded, the license will be suspended on the first charge for ten days (Re Suk, Bulletin 1477, Item 5), on the second charge for fifteen days (cf. Re Buffalino, Bulletin 1526, Item 10) and on the third charge for fifteen days (Re Hampshire Bar, Inc., Bulletin 1541, Item 3) or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 2d day of January, 1964,

ORDERED that Plenary Retail Consumption License C-143, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Mary J. Rogers for premises 202 Hudson Street, Hoboken, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Thursday, January 9, 1964, and terminating at 2:00 a.m. Thursday, February 13, 1964.

EMERSON A. TSCHUPP
 ACTING DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto.Susp. #238	)	
In the Matter of a Petition to Lift	)	
the Automatic Suspension of Plenary	)	
Retail Consumption License C-56,	)	
issued by the Board of Alcoholic	)	
Beverage Control for the City of	)	ON PETITION
Paterson to	)	ORDER
 D. ALBERT VIGLIANO	)	
t/a AL'S TAVERN	)	
131 N. Main Street	)	
Paterson, N. J.	)	

BY THE ACTING DIRECTOR:

It appears from the petition filed herein and the records of this Division that on November 14, 1963, the licensee-petitioner was fined \$50 and \$5 costs in the Paterson Municipal Court after pleading guilty to a charge of sale of alcoholic beverages to a minor on November 2, 1963, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of his license for the balance of its term. R.S. 33:1-31.1. The suspension has not been effectuated because of the pendency of this proceeding.

It further appears that the municipal issuing authority has suspended the license for fifteen days from December 9 to December 24, 1963, after finding the licensee guilty of a charge in disciplinary proceedings alleging the same sale to the minor. It appearing that the suspension has been served, I shall lift the automatic suspension. Re Konrad, Bulletin 1512, Item 14.

Accordingly, it is, on this 23d day of December, 1963,

ORDERED that the statutory automatic suspension of said license C-56 be and the same is hereby lifted, effective immediately.

EMERSON A. TSCHUPP
ACTING DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

FOURDEE TAVERN, INC.
t/a Dolan's Tavern
3708 Tonnelle Avenue
North Bergen, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-32, issued by the Municipal
Board of Alcoholic Beverage Control
of the Township of North Bergen.

Licensee, by George A. Dolan, President, Pro se.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
November 7, 1963, it possessed an alcoholic beverage in one
bottle bearing a label which did not truly describe its
contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
ten days, with remission of five days for the plea entered,
leaving a net suspension of five days. Re Kickey's, Inc.,
Bulletin 1541, Item 9.

Accordingly, it is, on this 30th day of December,
1963,

ORDERED that Plenary Retail Consumption License C-32,
issued by the Municipal Board of Alcoholic Beverage Control of
the Township of North Bergen to Fourdee Tavern, Inc., t/a Dolan's
Tavern, for premises 3708 Tonnelle Avenue, North Bergen, be and
the same is hereby suspended for five (5) days, commencing at
3:00 a.m. Monday, January 6, 1964, and terminating at 3:00 a.m.
Saturday, January 11, 1964.

EMERSON A. TSCHUPP
ACTING DIRECTOR

11. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
 LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

M. GARRET PAL)
 t/a PAL'S BAR & GRILL)
 236 Monroe Street)
 Passaic, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-52, issued by the Board of)
 Commissioners of the City of Passaic.)

 Licensee, Pro se.

David S. Piltzer, Esq., Appearing for the Division of Alcoholic
 Beverage Control.

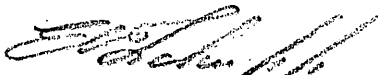
BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
 November 7, 1963, he possessed an alcoholic beverage in one
 bottle bearing a label which did not truly describe its contents,
 in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for
 ten days, with remission of five days for the plea entered,
 leaving a net suspension of five days. Re Kickey's, Inc.,
 Bulletin 1541, Item 9.

Accordingly, it is, on this 30th day of December, 1963,

ORDERED that Plenary Retail Consumption License C-52,
 issued by the Board of Commissioners of the City of Passaic to
 M. Garret Pal, t/a Pal's Bar & Grill, for premises 236 Monroe
 Street, Passaic, be and the same is hereby suspended for five
 (5) days, commencing at 3:00 a.m. Monday, January 6, 1964, and
 terminating at 3:00 a.m. Saturday, January 11, 1964.


 Emerson A. Tschupp,
 Acting Director.