

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

BULLETIN 2085

FEBRUARY 13, 1973

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

BULLETIN 2085

FEBRUARY 13, 1973

1. APPELLATE DECISIONS - MIDDLEBROOK WINES & LIQUORS, INC. v. OCEAN TOWNSHIP.

Middlebrook Wines & Liquors, Inc.,)	
Appellant,)	
v.)	On Appeal
Township Council of the Township)	CONCLUSIONS
of Ocean (Monmouth County),)	and
Respondent.)	ORDER
-----)		
Edward A. Reilly, Jr., Attorney for Appellant		
Dennis M. Crawford, Esq., Attorney for Respondent		

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Council of the Township of Ocean (hereinafter Council) whereby it denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail distribution license from Schultz and Friedman Pharmacies, Inc., to appellant and from premises on Norwood Avenue to 1566 Highway 35, Middlebrook Shopping Center, Ocean. No issue was raised relative to the qualifications of the transferee.

Appellant, in its petition of appeal, alleges that the action of respondent was erroneous, in that:

"The opinion of the Council did not have nor does it have any basis in law or fact to sustain it; therefore, it is arbitrary and illegal as a matter of law."

The Council, in its answer, justified its action by relying upon the reasons stated in its resolution (adopted by a vote of three to one), as follows:

"WHEREAS, it is the opinion of the Township Council of the Township of Ocean, that there presently exists on Highway #35 in the Township of Ocean, too many Alcoholic Beverage Control Licenses and in particular one just north of the Middlebrook Shopping Center and one just south of the Middlebrook Shopping Center and that the proposed place to place transfer application in this instance is not deemed to be in the best interest of the public and the citizens of the Township of Ocean."

The appeal was heard de novo in accordance with 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 photographs and maps were received in evidence. It appears that the subject license is presently located in a drug store on Norwood Avenue, which runs along the easterly boundary line of the Township. Another "D" licensee is located in an A & P Market, approximately eight hundred feet distant. A "C" licensee is located across the street from the subject license.

The proposed site is located in a large shopping center located on the westerly side of Highway No. 35, approximately midway between the northerly and southerly boundaries of the Township. The closest licensed premises to the south of the proposed site along Highway No. 35 is The Admiral's Table, approximately twelve hundred feet distant, and the closest licensed premises to the north is Ancar, approximately seventeen hundred feet distant. Both are "C" licenses. There are two "C" licenses located on Highway No. 35, north of Ancar, the closest located in excess of two thousand feet distant thereof, and there are four "C" licenses located south of The Admiral's Table, the closest located in excess of five thousand feet thereof. Sunset Liquors, a "D" licensee, is located on Sunset Avenue, a short distance to the east of Highway No. 35, approximately one mile to the south of the proposed location. This would be the closest "D" licensee to the proposed location. The Township has no distance ordinance.

In behalf of appellant, John J. Lynch, a licensed city planner, testified that he was involved in planning services for the Township for the past ten years. The Township population west of Highway No. 35 ten years ago was approximately thirty-three hundred people. The present population is approximately seventy-five hundred to eight thousand. The potential growth area lies west of Highway No. 35; the east side thereof is almost fully developed.

Joseph A. Palaia, the Township mayor, testified that he favored the transfer because no competitor voiced objections to the transfer and because, in its present location it was close to two other licensees, one of whom is a "D" licensee and the other a "C" licensee, selling packaged goods. The Admiral's Table, the nearest licensee to the proposed location, is a barroom facility open from twelve noon to 3:00 a.m. and no packaged goods are sold there. There are no "D" licenses located on Highway No. 35.

Richard E. English, III, a Township councilman, testified that he opposed the transfer because he felt that its placement between The Admiral's Table and Ancar would create an undue concentration of liquor establishments on Highway No. 35.

Dr. Thomas Bellissimo, a Township councilman, testified that he was opposed to the transfer because, in its present location the liquor establishment is now of greater service to the community than it would be in the proposed location. Further, the proposed transfer would place the license in too close proximity to Ancar and to other liquor establishments on the highway, who would be affected economically.

Benjamin R. Harvey, a Township councilman, testified that he was opposed to the transfer because of the twenty liquor licenses issued by the Township, ten liquor establishments were located either on or immediately adjacent to Highway No. 35. Of the remaining ten liquor licenses, three were club licenses. To add another license on Highway No. 35 would "further compound a problem, or compound that particular ratio." If the transfer were to be approved, it would leave only seven licenses to serve the remainder of the Township. The witness conceded that

the highest potential of growth lies westerly of the highway and that two other liquor establishments including a "D" license and a "C" licensee who sold packaged goods were located in close proximity to the present location of the subject license. It was his view that he should not alleviate an imbalance in one area by creating the same situation in another area.

No oral testimony was presented in behalf of the Council.

Appellant contended that the reasons advanced by the majority of the Council are insufficient in law since they bear no relationship to the health, welfare and safety of the community particularly in view of the fact that the public did not express hostile views to appellant's application.

In adjudicating this matter, I observe that the burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, at als. Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director who may reverse its action in the event of any abuse thereof. However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Elanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... 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."

And further in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954). wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the applicable principle (at p.23):

"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)."

The Director's function on an appeal 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 opinion, and if so, to affirm irrespective of his personal view. Joa v. Pine Beach, Bulletin 1592, Item 3.

In conclusion, it may be stated that in matters involving transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Paterson, 33 N.J. 428, p.446 (1960). As indicated hereinabove, the Director is governed by the principle that, where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 Super. 306 (App. Div. 1960). 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."

The Council has in my opinion understood its full responsibility, and has acted circumspectly and in the reasonable exercise of its discretion in denying the transfer. I do not find the objections of sufficient merit and thus conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous or in abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant and such answer to said exceptions was filed by the attorney for the Council, pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report, and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of December 1972,

ORDERED that the action of respondent Township Council of the Township of Ocean (Monmouth County) 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 - SOUTH JERSEY PACKAGE STORES ASSOCIATION v. EDGEWATER PARK.

South Jersey Package Stores Association,)	
)	
Appellant,)	On Appeal
v.)	
)	SUPPLEMENTAL
Township Committee of the Township of Edgewater Park, and Sil Inc.,)	CONCLUSIONS and ORDER
)	
Respondents.)	

Richman, Berry, Ferren & Tyler, Esqs., by Henry J. Tyler, Esq.,
Attorneys for Appellant
Gladden, Brierley & Paglione, Esqs., by Robert E. Gladden, Esq.,
Attorneys for Respondent Sil Inc.

BY THE DIRECTOR:

This matter came on to be heard pursuant to a remand to this Division by the Superior Court of New Jersey, Appellate Division, following appeal from Conclusions and Order entered by the Director of this Division on April 4, 1972. That conclusion reversed the action of the Township Committee of the Township of Edgewater Park (hereinafter Township) in issuing a new plenary retail consumption license to respondent Sil Inc. South Jersey Package Stores Assn. v. Edgewater Park and Sil Inc., Bulletin 2043, Item 3.

Prior to the consideration of the appeal by the Appellate Division it became apparent that the Conclusions and Order of the Director of this Division were based upon erroneous information obtained by the Division from the office of the Secretary of State, which office disclaimed knowledge of the filing with it of a certificate issued by the United States Bureau of Census relative to a special population census conducted by it in the Township.

Following said Conclusions and Order, but prior to the oral argument before the Appellate Division, the Deputy Attorney General assigned to represent the Director in the matter ascertained that a certification of the result of the "special census" had in fact been received in the office of the Secretary of State and the results of such census had been promulgated by way of a certification of the Acting Secretary of State that the prior certification of population of the Township by the United States Bureau of the Census had been properly filed in his office.

Motion was duly made in the Appellate Division of the Superior Court that the matter be then remanded to the Director of this Division to allow for the introduction into evidence of such new information and for a supplemental Conclusion and Order by the Director based thereon, upon which the appeal, jurisdiction over which was retained by the Appellate Division, would then follow in normal course. Upon the granting of such motion a supplemental hearing followed and this Supplemental Conclusion and Order issues in accordance with the court's directive.

Certain documents, made part of the record herein, were introduced into evidence as follows: (a) a letter of transmittal from the Department of Commerce, Bureau of Census, to the Secre-

tary of State (New Jersey) dated July 23, 1969; (b) Certification of Director of Bureau of the Census dated July 22, 1969, indicating the population of the Township as of June 10, 1969; (c) copy of Certification of the Acting Secretary of State dated September 27, 1972, indicating that the above certification of census had been filed in his office by the Census Director on July 25, 1969. In addition to these, further documents were accepted into evidence at this hearing: (1) affidavit of Silverio Trentalange, president of respondent Sil Inc., (2) bill for services by C. William Wolfe, architect, and (3) bill for services of Gerard DeMuro, C.P.A.

Silvio Trentalange, president of respondent Sil Inc., testified in support of the affidavit introduced above and confirmed that he had paid the above bills with the exception of a \$500 holdback from the monies due the accountant.

Following the brief introduction of testimony aforesaid and the oral argument of counsel in support of their respective contentions, it appeared that the basic issue presented is: if the items now in the record had been available then, would it have resulted in an affirmance of the Township's action in granting the subject license.

The determination in the Conclusions and Order (Bulletin 2043, Item 3) was based primarily upon the inaccurate information gleaned from the office of the Secretary of State that there was no public record of the results of the "special census" above referred to. Such absence indicated that the census was not properly "promulgated" for official use. To promulgate means to make known by open declaration or to announce officially. Webster's Third New International Dictionary (1961). Such promulgation is a basic requisite to the use of a census. The promulgation of the "special census" in the instant matter by the Secretary of State resulted from his filing on July 25, 1969, as appears in the certification under seal of the Secretary of State, dated September 27, 1972.

A growing dependence upon Federal census statistics by our Legislature in contradistinction of local or State census compilations is evident in the statutes. Apportionment of the Legislature is based upon the Federal Decennial census (N.J.S.A. 52:10-6) which becomes promulgated by its filing with the office of the Secretary of State (N.J.S.A. 52:4-1). In the legislative history of the Alcoholic Beverage Law the proportion of licenses to population was determined "according to federal or state census" N.J.S.A. 33:1-5, initially adopted in 1933.

Further proportions are to be determined by the "last preceding Federal census", N.J.S.A. 33:1-21.3, 5, 7, as enacted in 1939. The same phrase "the then preceding Federal census" has been used in the same context by Chapter 170 of the Laws of 1969. However, the Legislature did not employ the term "decennial" census in connection with the Alcoholic Beverage Law. Hence the determination in the prior Conclusions and Order of the Director herein, that the Federal "special census" totals could be used, provided such figures were properly promulgated.

Chronologically the facts in the instant matter indicate that on July 9, 1969, the Township granted a license to respondent Sil Inc. by resolution adopted "pending the certification of the special Federal Census population figure." The license was granted but its issuance was conditioned further upon the completion of respondent's (Sil Inc.) building.

The practice of granting licenses and withholding issuance until conditions have been met is well established. N.J.S.A. 33:1-32. See Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949).

The adopting resolution, however inarticulately drawn, conditions the grant of the license to respondent Sil Inc. upon the result of the then pending census count, and indicates that the entire action is "pending" the certification of the population figure. By fair implication it can be assumed that the Township was aware of the "special census" having been taken and that the expected conclusions would support its actions; hence the word "pending" was included as a condition to its resolution. The census was in fact concluded as of June 10, 1969; the resolution was adopted July 9, 1969, followed by its promulgation by the filing in the office of the Secretary of State on July 25, 1969. As the license was approved conditionally but not issued, the Township reserved to itself the immediate power to rescind the grant had the promulgation of the census not followed forthwith.

It must be further fairly assumed that the letter of A. Ross Eckler, Director of the Bureau of the Census, to the Secretary of State, dated July 23, 1969, and the accompanied certification, were properly filed with the office of the Secretary of State as the subsequent renewals of respondent's (Sil Inc.) license for the subsequent years was no longer conditioned upon the "pending" census (the further conditions relating to the required construction were continued).

It is regrettable that proof of submission of the certification from the Bureau of the Census to the Secretary of State was not made available at the initial hearing in this Division, the absence of which, together with the misinformation supplied resulted in the Conclusions and Order appealed from.

A Hearer's report was waived by the parties hereto, as permitted by Rule 14 of State Regulation No. 15, and the matter was referred directly to me for determination on the record.

After careful consideration of the entire record herein, including transcripts of testimony and the exhibits, I find that respondent Township Committee acted in the proper exercise of its lawful discretion in granting the subject license to respondent Sils Inc. Hence I shall vacate my prior order heretofore entered, and shall affirm the action of respondent Township Committee.

Accordingly, it is, on this 13th day of December 1972,

ORDERED that the prior order entered herein on April 4, 1972, be and the same is hereby vacated; and it is further

ORDERED that the action of the Township Committee of the Township of Edgewater Park be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

Robert E. Bower,
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS GAME) - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

Peter Galatro & Kathleen Galatro)
 t/a Marine Bar)
 14-16-18 Wharf Avenue)
 Red Bank, N. J.,)

CONCLUSIONS

Holders of Plenary Retail Consumption)
 License C-15 (for 1971-72 and 1972-73)
 license periods), issued by the Borough)
 Council of the Borough of Red Bank.)

and
 ORDER

 Charles Frankel, Esq., Attorney for Licensee
 Dennis M. Brew, Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees plead not guilty to a charge alleging that on October 15, 1971 they permitted possession of slips, tickets, memoranda and other writings pertaining to bookmaking, pool selling and lotteries, known as the "numbers game" and "football pools", in violation of Rules 6 and 7 of State Regulation No. 20.

Appearing for the Division, ABC Agent O testified that on October 15, 1971, in the company of other agents and law-enforcement officers, he participated in a raid and search of the licensed premises. He found twenty lottery books in a large pot in the kitchen. In a liquor storage closet he located six football pool tickets, normally used in commercial football pools, as well as pieces of paper that appeared to contain horse and numbers bets. All of the discovered items were turned over to detectives of the Monmouth County Prosecutor's office who participated in the raid.

Agent B testified that he also participated in the raid as described by Agent O, and made a search of the area behind the bar which disclosed a cigar box containing two address books and "numbers" slips. Another sheet of paper containing apparent daily-double bets and another paper with apparent bets upon it were found in a drawer behind the bar. These items were also handed to the Prosecutor's detectives.

Detective Bruce E. Kerrigan (an investigator with the Monmouth County Prosecutor's office) testified that on October 15, 1971, by prearrangement and armed with a search warrant, he conducted a raid on the licensed premises to investigate suspected gambling activity. Before he entered the licensed premises he discovered one Pete Rossi (driver of a laundry truck) in the parking lot of the licensed premises. He searched Rossi and his truck. He then entered the premises and aided the search then in progress by his fellow officers. Football pool betting slips discovered in the premises were then identified as such.

Charles K. O'Connor (another detective attached to the Prosecutor's office) testified that he accompanied the agents of this Division, two members of the local Police Department and his associate Detective Kerrigan in the investigation of the licensed premises. From his expertise as a member of the gambling squad he corroborated Agent O's testimony that the slips found were part of the material used in commercialized gambling.

Peter Rossi, on behalf of the licensee, testified that he had placed six football pool tickets on a shelf in the liquor storage area without the knowledge of the licensee or his employees, explaining:

"Well, I was going home for lunch, and I didn't want my wife to know I had the tickets. I was going to pick them up later."

The witness admitted the search of his person revealed four football pool slips and a scratch sheet in his pocket. When asked about his desire to secrete the football pool tickets in the licensed premises, despite the other tickets in his pocket, the following colloquy ensued:

- "Q In the course of your work do you not have normal laundry tickets?
A Yes, I do.
Q Is it the custom of your wife to investigate the tickets and other paraphernalia which are in your truck?
A No, it isn't.
Q Tell me, Mr. Rossi, why couldn't you put those tickets right in your truck.
A I really don't know the reason why. I know it is wrong to do it. I don't know the reason I did."

Kathleen Galatro (a co-licensee) testified that she was not present in the licensed premises during the search and investigation.

Peter Galatro (husband and co-licensee with his wife) testified that on the day of the aforementioned search he was en route to Atlantic City and not present in the premises. His explanation of the lottery books for the benefit of the local fire company was that he had stored them in the licensed premises merely as a convenience for later distribution to be made outside the premises. They were not to be used in the premises. He had no knowledge of gambling activity on the said premises, and did not nor would he permit gambling to take place in his facility.

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 (1948). Thus the Division is required to establish its case by a fair preponderance of the credible evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956). The finding must be based upon a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

The defense is based upon the premise that, since the infracting evidence was placed upon the premises by a patron without the knowledge of the licensees or their employees, the charge herein cannot be sustained against the licensees. The testimony of the agents and the law-enforcement officers was detailed and clear. Their convincing description of the gambling items and paraphernalia found in the licensed premises fully establishes and supports the charge. The testimony of Rossi that he placed the gambling slips on a shelf in the premises so that his wife would not see them during his lunch visit is so implausible as to be ludicrous. Such fabrication was an obvious attempt by that witness to exculpate the licensees.

Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960). I find the testimony of the agents and detectives to be fully credible and believable.

My examination and evaluation of the entire record herein lead to the inevitable conclusion that the charge herein has been established by a clear preponderance of the credible evidence, and recommend that the licensees be found guilty as charged.

Absent prior adjudicated record of suspension, it is accordingly recommended that the license be suspended for ninety days. Re Connolly, Bulletin 2020, Item 2.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the attorney for the licensee pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions thereto, which exceptions I find were either satisfactorily resolved in the Hearer's report or are without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 13th day of December 1972,

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Red Bank to Peter Galatro & Katherine Galatro, t/a Marine Bar for premises 14-16-18 Wharf Avenue, Red Bank, be and the same is hereby suspended for ninety (90) days commencing 2:00 a.m. on Tuesday, January 2, 1973 and terminating 2:00 a.m. on Monday, April 2, 1973.

ROBERT E. BOWER
DIRECTOR

4. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1972 THROUGH DECEMBER 31, 1972

	1st Quarter July, Aug., Sept	2nd Quarter Oct., Nov., Dec.	Total
ARRESTS:			
Total number of persons arrested	31	26	57
Licensees and employees	9	6	15
Bootleggers	13	13	26
Minors	9	7	16
SEIZURES:			
Cars	-	1	1
Trucks	-	1	1
Alcohol - gallons	.125	3	3.125
Distilled alcoholic beverages - gallons	6.35	793.43	799.78
Wine - gallons	1.73	82.02	83.75
Brewed malt alcoholic beverages - gallons	45.63	154.82	200.45
COMPLAINTS AND INVESTIGATIONS:			
Inspections and visits made on assigned investigations	5,990	3,873	9,863
Complaints assigned for investigation	917	1,004	1,921
Investigations completed	905	1,046	1,951
Investigations pending	1,073	998	2,076
Premises where alcoholic beverages were gauged	1,400	1,776	3,176
Bottles gauged	24,448	30,993	55,446
Premises where violations were found	924	553	1,432
Number violations found	1,209	796	2,005
License applications investigated	35	13	53
Contact with other law enforcement agencies	1,295	1,344	2,639
LABORATORY:			
Analyses made	375	314	689
Refills from licensed premises - bottles	303	239	547
Bottles from unlicensed premises	18	11	29
Controlled Dangerous Substance	-	2	2
IDENTIFICATION:			
Criminal fingerprint identifications made	20	24	44
Persons fingerprinted for non-criminal purposes	1,092	695	1,783
DISCIPLINARY PROCEEDINGS:			
Cases instituted at Division	114	136	250
Violations involved	153	166	304
Sales during prohibited hours	22	25	47
Sales to minors	40	21	61
Sales below filed price	2	-	2
Possess liquor not truly labeled	13	19	32
Lewdness	3	-	3
Permit immoral activity	4	5	9
Permit misc. gambling on premises	6	10	16
Purchase from improper source	-	2	2
No license appl. on premises	2	10	12
No Form E-141-A on premises	4	21	25
Nuisance	2	1	3
Hindering Investigation	3	2	5
Fail to reveal previous suspension	-	3	3
Beverage Tax Law non-compliance	-	22	22
Sale to club non-member	8	2	10
Fraud & front	9	5	14
Aiding & abetting	6	3	9
Employ person convicted of crime	1	1	2
No true books of account	3	3	6
Single instances of other violations	10	11	21
Cases brought by municipalities on own initiative & rept to Division	49	67	116
Violations involved	59	85	142
Sales to minors	32	41	73
Sale during prohibited hours	5	14	19
Act of violence	4	3	7
Brawl	3	3	6
Disturbance	2	-	2
Nuisance	2	5	7
Employ intoxicated persons	1	2	3
Sale to intoxicated persons	-	2	2
Employee fail to have identification card (local ordinance)	1	2	3
Gambling	4	4	8
Obstructing view	-	2	2
Employee convicted of crime	1	1	2
Single instances of other violations	4	4	8
HEARINGS HELD AT DIVISION:			
Total number of hearings held	134	80	214
Appeals	23	18	41
Disciplinary proceedings	84	57	121
Seizures	-	12	12
Eligibility	27	13	40

	1st Quarter			2nd Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	
STATE LICENSES AND PERMITS:							
Total number issued	5,425			4,451			9,844
Licenses	567			8			575
Solicitors' permits	173			133			306
Employment permits	1,344			315			2,129
Disposal permits	219			299			518
Social affair permits	1,298			1,433			2,736
Wine permits	65			404			469
Miscellaneous permits	1,041			709			1,750
Transit insignia	582			553			1,115
Transit certificates	234			62			296
OFFICE OF AMUSEMENT GAMES CONTROL:							
Licenses issued	11			-			11
Premises inspected	78			-			78
Premises where violations found	24			-			24
Number violations found	28			-			28
State Fair licenses issued	172			-			172
Enforcement files established	58			34			92

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

Dated: January 10, 1973

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - APPLICATION FOR IMPOSITION OF FINE IN LIEU OF 20 DAYS SUSPENSION GRANTED.

In the Matter of Disciplinary
Proceedings against

Wemp Inc.
t/a Silver Tavern
142-144 Speedwell Avenue
Morristown, N.J..

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Mayor and Board of Aldermen of the Town of Morristown.

Licensee, by Edward Stephen Yankowich, Principal Stockholder
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to a charge alleging that on July 18, 1972, it sold alcoholic beverages to a person under the age of twenty-one years, i.e., age seventeen, in violation of Rule 1 of State Regulation No. 20.

On behalf of the Division, David --- testified that he is seventeen years old and was born June 2, 1955. Shortly after midnight on July 18, 1972, he was accompanied by Stephen --- and Henry ---, who drove to the licensed premises for the purpose of purchasing beer. Henry parked in a parking lot diagonally opposite the licensed premises. Immediately thereafter David left the car empty-handed and entered the licensed premises at its door to the bar portion of a combination restaurant and bar. A male, whom he could not identify, approached him as he waited for service near a counter at the entrance, and, when he ordered a six-pack of beer, another male, whom he later identified as Harold G. Shotwell, went to the end of the bar, returned with a six-pack of beer for which David paid \$1.50. He returned to his car and friends.

In explaining how he was able to make such purchase, David admitted showing a false driver's license belonging to a friend who is twenty-four years old. He stated that he was not asked to execute any written representation with respect to his age nor was comment made of his age. He admitted consuming a portion of the beer.

Stephen testified that he is seventeen years old and on July 18, 1972, accompanied his friends, David and Henry, to the licensed premises in a car driven by Henry. After parking the vehicle in a parking lot diagonally opposite the licensed premises, David left the car empty-handed and returned in eight or ten minutes with a bag containing a six-pack of beer. He stated that he could see David enter the licensed premises and later saw him depart from it. He is familiar with the tavern which is clearly identifiable by an outside sign.

On cross examination he admitted that, as he was never in the tavern, he did not know if the door by which David entered led to the bar portion or the restaurant. He further admitted that while the car in which he was riding was parked in such a way that its front was facing the street on which the licensed premises were located, there was an angle in its direction that would require a slight turning of the head to keep the entrances in continuous view.

Agent DeR of this Division, testified that he visited the premises on August 23, 1972, in the company of David, Stephen and Henry. He parked his car in the same parking lot and in the general direction as described by the boys. The distance between the car and the entrance did not exceed a hundred feet and anyone in the car would have a clear view of the doorways. Accompanied by David, he entered the premises where David immediately and unhesitatingly identified the bartender, Harold G. Shotwell, as the person who obtained the beer from the rear of the bar. On cross examination the agent admitted that David could not identify the bartender who served him. He also admitted that another licensed premises is a mere seventy-five feet away from the subject licensed premises.

Harold G. Shotwell, testifying for the licensee, stated that he one of two bartenders employed, and during the week of July 18th, he was working days, i.e., until 4:30 p.m. He had no recollection of getting any beer for David and had never seen him until the visit by the agent and the minor.

He admitted, on cross examination, that on occasion he would stay in the tavern after his working hours, and if the bartender on duty was busy, he would assist. On the night of the alleged sale he could not recall if he was at home or at the licensed premises.

Edward Stephen Yankowich testified that he and his wife are the sole owners of the capital stock of the licensee corporation. He had spent more than sixteen years as a member of the Morristown Police Department and has had experience in situations where minors protect a source of alcoholic beverages by accusing another licensed premises. He produced records indicating that the evening of July 17 into the early morning of July 18, 1972 was a slow business night, implying that his bartender that evening was not so busy that he would have been unable to procure beer for David himself. He described his bartender then on duty as a man only five feet three inches in height, and added that David had stated to the agent that the bartender was a "big guy". He drew a sketch of the parking lot where the boys had allegedly parked, indicating that passengers in a car there parked would have had to have their heads continuously turned to keep the door of his tavern in view.

On cross examination he admitted that it would be possible for a car to have been parked in that lot at such an angle that a direct view of his premises could have been possible. He had reason to recollect having been in his tavern that evening and has no recollection of any sale to David or any other young person.

Although not represented by counsel, the licensee had its defense ably presented by Yankowich who argued with some vehemence that, as he was particularly mindful of the dangers of sales to minors, instructions to his bartenders would have been sufficient to have precluded such sale. He was emphatic in his belief that the minor had procured alcoholic beverages at some other place and had identified his place as a means of protecting the unauthorized source.

Preliminarily, it should be observed that we are dealing with a purely disciplinary action and such action is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

Since the matter sub judice presents a factual issue, the credibility of witnesses must be weighed. Evidence to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

I have had the opportunity to observe the demeanor of the witnesses as they testified and, in view of the conflict in the testimony, I have made a careful analysis and evaluation of their testimony.

Although the Division strongly deplores the conduct of the minor on the date in question, I am imperatively persuaded that his version had a substantial ring of truth with respect to the alleged purchase of the alcoholic beverages in the licensed premises.

I am impressed by the fact that the minor unhesitatingly directed the agents to the licensed premises. Upon entry he immediately pointed to the person who secured the beer, then not knowing that that person alternated as a day bartender. His frankness in admitting that he could not describe or recall the bartender then on duty adds to his credibility, not detracts from it. His description of the necessary walk to the end of the bar where the beer cooler was kept lends sufficient color to indicate a prior visit.

The demeanor and candor of the minor is in sharp contrast to the vagueness of the bartender, Shotwell, whose explanation of the method of verification of age of apparent minors showed lack of conviction. While the licensee's principal owner was convincing in his denial that he would be instrumental in the sale of any alcoholic beverages to minors, the testimony of his bartender was palpably unconvincing.

I conclude, therefore, that a fair evaluation of the evidence clearly preponderates in favor of a finding of guilt; and I so recommend.

The licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for twenty days. Re Alexander Liquors, Inc., Bulletin 2053, Item 4.

Conclusions and Order

Written exceptions to the Hearer's report were filed by the licensee and although not received within time as required by Rule 6 of State Regulation No. 16 were nonetheless considered.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions thereto, which exceptions I find were either satisfactorily resolved in the Hearer's report or are without merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

However, in view of the circumstances herein and the absence of violations having occurred within the direct knowledge of the agents of this Division, I shall favorably consider a prompt application by the licensee within ten days prior to the effective date of suspension herein, to accept a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971.

Accordingly, it is, on this 13th day of December 1972,

ORDERED that Plenary Retail Consumption License C-15, issued by the Mayor and Board of Aldermen of the Town of Morristown to Wemp Inc., t/a Silver Tavern for premises 142-144 Speedwell Avenue, Morristown, be and the same is hereby suspended for twenty (20) days, commencing 2:00 a.m. on Tuesday, January 2, 1973 and terminating 2:00 a.m. on Monday, January 22, 1973.

ROBERT E. BOWER
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary)
Proceedings against)
Wildwood Crest Liquors, Inc.) Amended Order
t/a Crest Tavern)
9600 Pacific Avenue)
Lower Township)
PO Wildwood, N.J.)
Holder of Plenary Retail Consumption)
License C-15, issued by the Township)
Committee of Lower Township.)
- - - - -)
George M. James, Esq., Attorney for Licensee

BY THE DIRECTOR:

On September 7, 1972 Conclusions and Order were entered in the within matter, imposing a suspension of license for ten days in consequence of a finding that the licensee had violated N.J.S.A. 33:1-2 prohibiting the sale of alcoholic beverages for off-premises consumption. Re Wildwood Crest Liquors, Inc., Bulletin 2067, Item 5. The effective date of the suspension, September 19, 1972, was stayed by letter of the Director dated September 15, 1972, in order to permit the licensee to make an application for a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971.

Thereafter the licensee determined not to make such application and the effective dates of suspension would now be normally fixed.

However licensee conducts a seasonal business and said business is not now being operated. Thus no effective penalty can be imposed at this time. The effective dates of the suspension will be fixed by further order which will be entered after the licensed premises shall have fully resumed business for the 1973 season.

Accordingly, it is, on this 29th day of December 1972,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of Lower Township to Wildwood Crest Liquors, Inc., t/a Crest Tavern for premises 9600 Pacific Avenue, Lower Township, be and the same is hereby suspended for ten (10) days, the effective dates to be fixed by further order as aforesaid.

Robert E. Bower
Robert E. Bower
Director