

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

BULLETIN 2094

March 29, 1973

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

BULLETIN 2094

March 29, 1973

1. NEW LEGISLATION - DELETION OF CITIZENSHIP AND RESIDENCY REQUIREMENTS.

On January 31, 1973, the Governor signed into law Senate No. 685, which thereupon became Chapter 14 of the Laws of 1973, effective immediately. The new law amends portions of R.S. 33:1-25 and 26 as follows (bracketed language deleted and underscored language added):

33:1-25. [No retail license shall be issued to a natural person unless he is a citizen of the United States and a resident of the State of New Jersey at the time of the submission of the application.] No license of any class shall be issued [to any individual who is an alien;] to any person under the age of 21 years [;] or to any person who has been convicted of a crime involving moral turpitude. [Cessation of United States citizenship or New Jersey residence shall be cause for the suspension or revocation of the license.]

No retail license shall be issued to any corporation, except for premises operated as a bona fide hotel, or for a business conducted or to be conducted by the corporation, as a tenant, at any airport owned or operated by the Federal, State, county or municipal government, unless each owner, directly or indirectly, of more than 10% of its stock qualifies in all respects as an individual applicant; provided, however, that retail licenses in effect on July 4, 1935, and since renewed each year, issued to corporations comprising stockholders who would have failed to qualify as individual applicants, may be renewed as heretofore.]

In applications by corporations, except for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding 1% or more of any of the stock thereof, and the names and addresses of all officers and of all members of the board of directors must be stated in the application, and if one or more of such officers or members of the board of directors or one or more of the owners, directly or indirectly, or more than 10% of such stock would fail to qualify as an individual applicant in all respects, [except as to citizenship, residence or age,] no license of any class shall be granted.

33:1-26. No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee [; but specialized technical workers, required in any business may, with the approval of the director, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship]. Persons failing to qualify as to age [; residence or citizenship] may, with the approval of the director, and subject to rules and regulations, be employed by any licensee, but such employee [; if disqualified by age,] shall not, in any manner whatsoever serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage; and further provided, that no permit shall be necessary for the employment in a bona fide hotel or restaurant of any person failing to qualify as to age [or residence] so long as such person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage, or participate in the mixing, processing or preparation thereof.

Robert E. Bower
Director

Dated: February 20, 1973

2. DISCIPLINARY PROCEEDINGS - SUMMARY OF UNCONTESTED PROCEEDINGS.

In the Matter of Disciplinary Proceedings
against:

CONCLUSIONS AND ORDERS

- A. George Brown & Donald Cohen t/a Communipaw Bar and Grill
593 Communipaw Ave., Jersey City
Charge: 'Hours' Regulation - fine of \$400 in lieu of
10 day/suspension - Order: February 14, 1973.
net
S-9449
Lic: C-347
- B. Circle Wayside Inn, Inc. t/a Wayside Inn
2572 Pennington Rd. PO RD#1 Pennington (Hopewell Twp)
Charge: Mislabeling 5 bottles- fine of \$550 in lieu of
20 day net suspension & Order: February 14, 1973.
S-9394
Lic: C-6
- C. Mack's In Crowd Bar, Inc. t/a Doc's Place
123 Sweets Ave., Trenton.
Charge: 'Front'- Failed to keep books - Disqualified
employee- Prior similar violation- Change of
ownership mitigated penalty to net suspension
of 48 days effective February 27, 1973.
Order: February 14, 1973.
S-9530
Lic: C-140
- D. Earl A. Sr. and Waneta Longo t/a Earl Longo's Bar
West Delilah Rd., PO Box 170, Pleasantville (Egg Harbor Twp)
Charge: 'Hours' Regulation- prior similar and dissimilar
record- fine of \$800 in lieu of 20 day net
suspension - Order : February 14, 1973.
S-9481
Lic: C-15
- E. James J. Linskey t/a Linskey's Tavern
64 York St., Jersey City.
Charge: 'Hours' violations - fine of \$600 in lieu
of 15 day net suspension - Order: February 15, 1973.
S-9484
Lic: C-469
- F. 31 Brunswick St., Inc. t/a Woody's Corner
401 Ocean Ave., Jersey City.
Charge: 'Hours' Regulation- fourth prior similar offense-
warning of possible future revocation- net sus-
pension of 48 days effective Feb. 27, 1973 -
Order: February 15, 1973.
S-9488
Lic: C-15
- G. Tee-Well Corp t/a Cardinal Lounge
120 Elizabeth Ave., Newark.
Charge: 'Hours' Regulations - fine of \$400 in lieu of
10 day net suspension - Order: February 15, 1973.
S-9470
Lic: C-393
- H. Columbia Park Bowling
3131 Kennedy Blvd., North Bergen.
Charge: Mislabeling 1 bottle - improper beer tap
(Rule 27 Reg 20) - fine of \$250 in lieu of
15 day net suspension -Order: February 15, 1973.
S-9460
Lic: C-52
- I. Queen City Lounge, Inc.
400 Liberty St., Plainfield.
Charge: Mislabeling 3 bottles - fine of \$1,575 in lieu of
15 day net suspension - Order: February 15, 1973.
S-9385
Lic: C-1

- J. Joe & Pete's Pizzeria, Inc. S-9469
105 Midland Ave., Wallington Lic: C-13
Charge: Mislabeling 2 bottles - fine of \$250 in lieu
of 10 day net suspension - Order: February 15, 1973.
- K. Rubin's Tavern (corp) S-9480
42 Paterson St., Paterson Lic: C-112
Charge: 'Hours' Regulation - two prior similar violations -
Suspension of net 28 days effective March 1, 1973
Order: February 15, 1973.
- L. Danny's Lounge, Inc. S-9392
791 Main St., Paterson Lic: C-164
Charge: Mislabeling 5 bottles- fine of \$400 in lieu of 20
day net suspension. Order: February 20, 1973.
- M. Taft Liquors, S-9418
810 Clinton Ave., Newark Lic: D-112
Charge: Sale to minor, 19- Prior dissimilar record- fine of
\$600 in lieu of 15 day suspension- Order: February 20, 1973.
- N. Al Duva Enterprises, Inc. t/a Al Duva's Pad I S-9475
389 Madison Ave., Paterson Lic: C-273
Charge: Mislabeling 16 bottles - Net suspension of 40 days -
Effective Mar. 3, 1973- Order: February 21, 1973.
- O. Club Jaguar Inc. S-9427
Highway #35, South Amboy Lic: C-24
Charge: Indecent entertainment- Net suspension of 36 days
Effective Mar. 5, 1973- Order: February 21, 1973.
- P. R P L Associates S-9471
371 High Mt. Rd., No. Haledon Lic: C-2
Charge: Sale to minor, 19- fine of \$400 in lieu of 10 day
net suspension - Order: February 21, 1973.
- Q. Nancy Stica t/a Mr. John's Pub S-9496
82 President St. Passaic Lic: C-156
Charge: False statement in application- Net suspension
of 25 days effective Mar. 8, 1973 -Order: February 23, 1973.
- R. Harry & Mary Barna S-9486
350 Henderson St., Jersey City Lic: C-177
Charge: 'Hours' Regulation- fine of \$400 in lieu of 10 day
net suspension - Order: February 23, 1973.
- S. Robert W. Sickel t/a Sickel's Shop-Rite Liquor Store S-9459
So. Evergreen Ave. opp. Elm Ave. Woodbury, Lic: D-2
Charge: Sale to minor, 19- fine of \$400 in lieu of 10 day
net suspension - Order: February 23, 1973.
- T. Chanticleer, Inc. S-9477
478 Millburn Ave., Millburn Lic: C-3
Charge: Mislabeling 1 bottle - fine of \$200 in lieu of
5 day net suspension- Order: February 23, 1973.
- U. Nolan's Lakeview Inn, Inc. S-9485
Highway #36, PO Box 410, Keyport (Twp Hazlet) Lic: C-15
Charge: 'Hours' violation - fine of \$500 in lieu of
10 day net suspension - Order: February 26, 1973.

ROBERT E. BOWER
DIRECTOR

3. APPELLATE DECISIONS - RAINES v. TRENTON ET ALS.

Eleanor Raines, et als.,)	
Appellants,)	
v.)	On Appeal
City Council of the City of)	
Trenton, and Benel, Inc., t/a)	CONCLUSIONS and ORDER
Glendale Liquor Store,)	
Respondents.)	
-----)	

Coleman, Lichtenstein, Levy & Segal, Esqs., by Mark Z. Segal,
 Esq., Attorneys for Appellants
 Robert A. Gladstone, Esq., Attorney for Respondent City Council
 Teich, Groh and Robinson, Esqs., by Leon M. Robinson, Esq. and
 William C. Groh, Esq., Attorneys for Respondent
 Benel, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the City Council of the City of Trenton (hereinafter Council) which by resolution adopted August 29, 1972, approved the application of Benel, Inc. for a place-to-place transfer of a plenary retail distribution license from premises 901 Pennington Avenue to 909-919 Pennington Avenue, Trenton.

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

In appellants' petition of appeal it was contended that the action of the Council was erroneous in that its action was contrary to the interests of appellants, and that the approved transfer was violative of the local ordinance prohibiting a transfer of licensed premises to a location within five hundred feet of other licensed premises. The answers of both respondents denied these contentions.

The facts presented to the adjudication of this matter are not substantially in dispute. Such factual background may be capsulated as follows:

On May 18, 1972 respondent Benel, Inc. received approval for a person-to-person and place-to-place transfer of the subject license from one Thomas A. Hannon at 468 North Clinton Avenue to 901 Pennington Avenue, Trenton. The record is silent respecting this transfer other than an averment by appellants that they had no prior notice of the municipal approval of such transfer and had no knowledge of the application upon which such transfer was based. Proper published notice and the required hearing upon which such transfer was based were not challenged. Appellants insisted, however, that, following the approval of such place-to-place transfer, respondent Benel, Inc. did not perfect the transfer by actually operating the licensed business at the approved location 901 Pennington Avenue, Trenton.

Thereafter, on July 10, 1972, respondent Benel, Inc. applied for a place-to-place transfer from 901 Pennington Avenue to 909-919 Pennington Avenue, which location is a mere one hundred sixty-five feet distant. Council meetings were held to consider the application and subsequently the transfer was approved on August 29, 1972. That action is the subject of this appeal.

This appeal has two primary thrusts. The first contends that, as appellants are unaware of the initial person-to-person, place-to-place transfer applications, hence raised no objections, and since the opening of the business establishment did not promptly follow, they were lulled into acquiescence of the action. Such contention is patently spurious. Notices of the application having been properly published (and there was presented no evidence to the contrary), any potential objectors have the right to file such objections. Not having raised such objections, they may not now complain that the Council did not heed their wishes.

The remaining contention is directed to the ordinance of the City of Trenton (Chapter IV, Alcoholic Beverage Control of the Revised General Ordinances of the City of Trenton - 1968), Sec. 4.3, which directs that:

"No plenary retail ... distribution license ... shall be ... transferred to premises within 500 feet of any other premises licensed...."

Uncontroverted proofs indicate that both 901 and 909-919 Pennington Avenue are within five hundred feet of a plenary retail distribution licensee known as "Parkway Liquor", being a licensed premises diagonally opposite but located and licensed in the Township of Ewing. The proposed site of 909-919 Pennington Avenue lies along the city line. Appellants contend that the ordinance precludes the approval of this transfer because of the distance restriction.

It has been held that a municipality may not approve a place-to-place transfer to a location proscribed by its own ordinance. Tube Bar, Inc. v. Commuters Bar, Inc., 18 N.J. Super. 351 (App.Div. 1952); Petrangeli v. Barrett, 33 N.J. Super. 378 (App.Div. 1954).

As in the case of statutes, the guide in construing an ordinance is to learn and give effect to the legislative intention. Wright v. Vogt, 7 N.J. 1, 5 (1951).

It is patently obvious that the ordinance in question is the ordinance of the City of Trenton and, viewed in pari materia, it intends to be restrictive to licensees within its own municipality. It is inconceivable that in the creation of the ordinance its framers intended references to licensed premises in adjoining municipalities. To hold otherwise would unduly restrict the Council from making full determinations of the licensed premises within its jurisdiction in conformity with the provisions contained in the relative local ordinances. Petrangeli v. Barrett, supra; cf. 9 McQuillin, Municipal Corporation (3rd Ed. 1950), par. 26.73.

The testimony adduced by appellant Raines and her witnesses indicated a general neighborhood distaste for the conversion by respondent Benel, Inc. of an abandoned gasoline filling station to a one-story package liquor store, an elevation sketch of which was offered into evidence. Counsel for appellants contended that, as several hundred residents had signed petitions against the intrusion of the proposed licensed premises, such petitions represented "popular sentiment" contrary to the grant of transfer and this Division should support such sentiment, citing Fanwood v. Rocco, 33 N.J. 404 (1960). The interpreters of "popular sentiment" are the governing officials who, both in Fanwood and this matter, determine the effect of "popular sentiment" as it relates to the total benefit to the community. Absent proof to the contrary, it must be presumed that the Council had before it all of the facts upon which such determination may be based. Citing Fanwood:

"... 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...." Fanwood v. Rocco, supra, at p. 414.

Therefore, after considering all of the evidence herein, including transcript of testimony, the exhibits and the memoranda of counsel, I conclude that appellants have failed to sustain the burden of establishing that the action of the Council was erroneous or constitutes 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 Council and dismissing the appeal.

However, I further recommend that the transfer of the subject license should contain a condition that the license shall not be actually issued until respondent Benel, Inc. completes construction of the proposed structure in which licensed facility is to be operated and the Council determines that such construction is in accordance with the plans submitted to the Council and meets all regulations concerning its suitability. Cf. Hudson-Bergen etc. v. Lyndhurst and T & E Liquors, Inc., Bulletin 1914, Item 2.

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

Accordingly, it is, on this 26th day of February 1973,

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

ROBERT E. BOWER
DIRECTOR

4. APPELLATE DECISIONS - FELIX'S RESTAURANT and COCKTAIL LOUNGE v. HADDON.

Felix's Restaurant and)	
Cocktail Lounge (a corp.),)	
t/a Haddonview Lounge,)	
)	On Appeal
Appellant,)	
v.)	CONCLUSIONS and ORDER
Board of Commissioners of)	
the Township of Haddon,)	
)	
Respondent.)	

Louis N. Caggiano, Esq., Attorney for Appellant
Michael A. Orlando, Esq., Attorney for Respondent

BY THE DIRECTOR:

This is an appeal from action of respondent Board of Commissioners of the Township of Haddon (hereinafter Board) which suspended appellant's plenary retail consumption license for premises Cuthbert Road and MacArthur Blvd., Haddon Township, for fifteen days effective January 2, 1973, after finding it guilty of sale of alcoholic beverages in violation of Rule 1 of State Regulation No. 38.

Upon filing of the appeal, respondent's order of suspension was stayed pending determination of the appeal.

When the matter came on for hearing, neither appellant nor its counsel appeared to pursue the appeal, whereupon counsel for respondent duly moved for dismissal of the appeal. I have thereupon determined to grant the motion and dismiss the appeal.

Accordingly, it is, on this 20th day of February 1973,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated January 3, 1973, staying respondent's order of suspension be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the Township of Haddon to Felix's Restaurant and Cocktail Lounge (a corp.), t/a Haddonview Lounge, for premises Cuthbert Road and MacArthur Blvd., Haddon Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, March 5, 1973, and terminating at 2 a.m. Tuesday, March 20, 1973.

Robert E. Bower,
Director.

5. NOTICE TO ALL LICENSEES - NEW STATUTORY EFFECT UPON OWNERSHIP AND
EMPLOYMENT IN RETAIL LICENSES - EMPLOYMENT OF MINORS.

On January 31, 1973, Senate Bill No. 685 was approved by Governor William T. Cahill and thereupon became Chapter 14 of the Laws of 1973. This Act amends several sections of the Alcoholic Beverage Law (R.S. 33:1-1 et seq.).

Specifically, R.S. 33:1-25 is amended to eliminate the present requirement that persons holding retail licenses or stock interest in excess of 10% in corporate retail licenses must be citizens of the United States and New Jersey residents. Additionally, R.S. 33:1-26 has been amended to eliminate citizenship and residence requirements as prerequisites for employment, directly or indirectly, in or upon licensed premises.

In effect, this law provides that non-residents and non-citizens are now eligible to apply for and hold alcoholic beverage licenses and to be employed on any licensed premises in this State.

These amendments, effective January 31, 1973, necessarily will result in changes to the appropriate sections of the Division's Rules and Regulations which are, specifically, State Regulation No. 13 which refers to employment by licensees of a person failing to qualify as a licensee.

It should be borne in mind that the amendment to the Statute in no way affects the employment of minors on licensed premises. In accordance with Chapter 81, P.L. 1972, MINORS ARE DEEMED TO BE ALL PERSONS UNDER THE AGE OF 18. Employment on any licensed premise of any minor without Division permit will continue to be a violation of the Alcoholic Beverage Law unless the licensed premise qualifies as a bona fide hotel or restaurant as defined by R.S. 33:1-1(t), as provided by Rule 3 of State Regulation No. 3. Employment permits will not be issued to minors under the age of 16 for employment on plenary retail consumption licensed premises (including those with the Broad Package Privilege).

These employment permits do not permit such minors (in accordance with the State Labor Law) to be engaged in the preparation, sale or serving of alcoholic beverages, or in the sale of cigarettes or other tobacco products, or in any dancing or theatrical exhibition or performance (including the playing of musical instruments).

Permits for employment of minors on plenary retail distribution licensed premises will not be issued to minors under the age of 15 in accordance with the Alcoholic Beverage Law.

ROBERT E. BOWER
DIRECTOR

Dated: February 21, 1973

6. NOTICE TO RETAIL LICENSEES - SHOWING OF MOTION PICTURES PERMITTED -
CHANGE OF PRIOR POLICY - WARNING AGAINST INDECENT FILMS.

NOTICE TO ALL RETAIL LICENSEES:

Since April of 1944 the Division has prohibited the exhibition of motion pictures on licensed premises, (except in certain instances, not pertinent here) in accordance with policy adopted by former Governor Alfred E. Driscoll who, at that time was Commissioner of the Department of Alcoholic Beverage Control. This policy has been firmly adhered to by my predecessors in office.

In recent months, I have received requests from retail licensees, cinema systems, film distributors and the like to reconsider Commissioner Driscoll's policy. In fairness to all concerned I instituted a comprehensive study to determine what effect, if any, the showing of motion pictures on licensed premises would have upon the public. The study included, among other things, the availability and effects of television on licensed premises and the mores or accepted conventions of our communities in this audio-visual age.

I concluded that a showing of the proper type of motion picture would be an incidental entertainment system of obvious interest to the public and of benefit to the proprietors of licensed premises, acceptable to both groups.

While the pre-censorship of all available films would be an insurmountable task for the Division, the fear of possible abuse of the privilege appears negligible. The irresponsible licensee who may seize the opportunity to project films of indecent nature will find that the Division has its own reliable techniques to ferret out the violators for appropriate action. In accordance with my conclusion, I have forwarded the following letter to those who requested the right to project films on licensed premises, or to supply projectors and films to licensees.

Re: Projection of Motion Pictures
on Liquor Licensed Premises

Gentlemen:

Please be advised that the Division of Alcoholic Beverage Control has reviewed a policy, established in 1944, prohibiting the projection of motion pictures on licensed premises, and in so doing, has determined that once valid reasons for such policy no longer exist. Therefore, the Division will discontinue said policy and allow films to be projected on licensed premises.

Nevertheless, licensees are pointedly warned that they will be held responsible if the contents of such films violate Rule 17 of State Regulation No. 20, which provides as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises or have in his possession or distribute or cause to be distributed any obscene, indecent, filthy, lewd, lascivious or disgusting recording, printing, writing, picture, or other matter".

What comes within the purview of the above quoted rule is not a matter of individual interpretation, and licensees should exercise discretion in selecting the subject matter of such films.

Any further questions, as to the above mentioned change in Division policy may be directed to the undersigned.

Very truly yours,

ROBERT E. BOWER
DIRECTOR

Dated: February 26, 1973

7. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN UNLICENSED CLUB - CLAIM FOR RETURN OF SUMS DEPOSITED BY OWNER OF PERSONALTY AND VENDING MACHINE OPERATOR REJECTED - ALCOHOLIC BEVERAGES, CASH AND MISCELLANEOUS PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure	:	
on May 14, 1972 of a quantity	:	Case No. 12,765
of alcoholic beverages,	:	
miscellaneous personal property	:	On Hearing
and \$19.20 in cash in the un-	:	
licensed premises of Bohania	:	CONCLUSIONS and ORDER
Social Club, located at 443	:	
Bergen Avenue, in the City of	:	
Jersey City, County of Hudson	:	
and State of New Jersey.	:	

.....
W. William Hodes, Esq., Appearing for claimant, J and M Amusement Company.

Harry D. Gross, Esq., Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28 and further, pursuant to two stipulations, one dated May 15, 1972 entered into by Jerry Bardin, agent for and on behalf of J & M Amusement Company, and the other dated May 17, 1972 entered into by Alfred Jeter, agent for and on behalf of Minskie Hanna to determine whether 37 containers of alcoholic beverages, miscellaneous personal property, fixtures and equipment and \$19.20 cash, as set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on May 14, 1972 at the unlicensed premises of Bohania Social Club, 443 Bergen Avenue, Jersey City, constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$200.00 deposited with the Director, under protest, by Jerry Bardin, representing the appraised value of one pool table and one juke box, pursuant to the aforesaid stipulation should be forfeited or returned to him; and, further, to determine whether the sum of \$125.00 deposited with the Director, under protest, by Alfred Jeter agent for Minskie Hanna, representing the value of a portable television set, two refrigerators, shoe shine stand, table, window fans, bar stools and bar, should be forfeited or returned to him.

When the matter came on for hearing, the J & M Amusement Company entered an appearance, and sought the return of \$200.00, representing the appraised value of the juke box and pool table seized at the premises of the Bohania Social Club at 443 Bergen Avenue, Jersey City. No one appeared to seek return of the sum of \$125.00 deposited by Albert Jeter, agent for Minskie Hanna, representing the value of the personal property aforesaid. Further, no one appeared on behalf of the Bohania Social Club to determine whether 37 containers of alcoholic beverages, miscellaneous personal property and \$19.20 in cash should be forfeited or returned to it.

The Division file was admitted into evidence with the consent of the parties present. Reports of Division agents contained in the file disclose that on May 14, 1972, Agents Sc, C and S entered the unlicensed premises of the Bohania Social Club and shortly thereafter Agent S purchased a drink of scotch whiskey and water at a cost of sixty cents, using a dollar bill, the serial number of which had been previously recorded.

By pre-arrangement, Agents Sc and C and members of the Jersey City Police Department then entered, identified themselves and searched the premises. The "marked" currency was retrieved from the person of one Ronald Eldridge, who had made the sale to Agent S. A search of the premises disclosed 37 containers of alcoholic beverages. Eldridge was arrested and charged with the sale of alcoholic beverages and possession with intent to sell alcoholic beverages without a license in violation of N.J.S.A. 33:1-50.

The furnishings and equipment, for which cash bond was posted, together with \$19.20 in cash was also seized; the said furnishings and equipment were thereupon returned.

The Division file included the Director's certificate that no alcoholic beverage license or permit of any kind was ever issued to the bartender, Eldridge, or to the Bohania Social Club or for premises 443 Bergen Avenue, Jersey City; proof of publication of notice of hearing; proof of service of notice of hearing; an inventory of the items seized; and the report of chemical analysis of the Division chemist certified by the Director, that the beverages seized in the instant matter contained an alcoholic content exceeding $\frac{1}{2}$ of 1%.

Jerry Bardin, appearing on behalf of J & M Amusement Company and seeking return of the money deposited under the aforementioned stipulation, testified that he has been the sales manager of the claimant company for eight years. A long-time customer of his company recommended one Minskie Hanna as a prospect for a machine location. While the policy of the company is to serve licensed premises for the most part, the subject premises were included as an accommodation. Prior to the installation of the equipment, an investigation revealed that the premises were used as a shoe shine parlor. Behind the shoe shine stand was a space containing a sink and refrigerator. Subsequent investigation revealed the premises were open only on weekends for shoe shining purposes.

Vincent Ruggiero, appearing on behalf of J & M Amusement Company testified that he is the collector who visits the subject location once every three or four weeks. His visits occurred early in the day. There were never patrons present and he could not recall seeing a bar or bar stools.

The seized alcoholic beverages are illicit because they were intended for sale and sold without a license. N.J.S.A. 33:1-1(i); N.J.S.A. 33:1-2; N.J.S.A. 33:1-50(a & b). Therefore, the alcoholic beverages, personal property and cash constitute unlawful property, are subject to forfeiture. N.J.S.A. 33:1-66(b). Seizure Case No. 11,597, Bulletin 1679, Item 7.

The Director has the discretionary authority to order the return of seized property upon showing by the claimant that he has acted in good faith and had no knowledge of the unlawful use to which his property was put, or of such facts as would have led a person of ordinary prudence to discover such use. N.J.S.A. 33:1-66(f).

Claimants for the return of seized property such as vending machines installed at unlicensed premises will not be permitted to rely on any presumed investigation of such premises by any other agency, including law enforcement agencies. Personal inspection at reasonable hours will be required in order to show that the claimant neither knew nor should have known of the illicit alcoholic beverage activity taking place in such premises. Seizure Case No. 12,252, Bulletin 1919, Item 5.

Under all of the circumstances herein, I am satisfied that the premises were used primarily as a club open to members of the public for pool playing and drinking purposes. The presence of the bar and stools, allegedly unobserved by the serviceman, was undoubtedly of permanent character and could have been observed with prudent observation. The claimant's employees apparently ignored what normal observation would have revealed and the claimant company with hundreds of installations, mindful of the duty imposed on it to be prudent in its business dealings, should have been alert to the prospect of illicit activity. The slightest indication that premises are not used as initially indicated places a burden upon the claimant to make some meaningful inspections. Seizure Case No. 12,367, Bulletin 2008, Item 5.

Accordingly, it is recommended that the claim of Jerry Bardin, on behalf of J & M Amusement Company for the return of \$200.00, deposited under the aforesaid stipulation, be rejected and the sum of \$200.00 be forfeited. It is further recommended that the sum of \$125.00, deposited by Alfred Jeter, as agent for Minskie Hanna, be forfeited and it is further recommended that the balance of the seized property, including the alcoholic beverages and the \$19.20 in cash, be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report were filed within time provided by Rule 4 of State Regulation No. 28.

Claimant contends that the Hearer erred in determining that its witness could not recall seeing any indication of an operation involving the sale of alcoholic beverages. Examination of the transcript of the testimony taken at the hearing held in this Division reveals that the witness for the claimant could not recall when he last visited the unlicensed premises, and his first response to a question concerning the presence of bar stools was that he did not remember. A further inquiry elicited the response that he did not see them.

He admitted not being sure if a TV or two refrigerators were present, nor did he remember the man to whom the equipment was rented.

In contrast to that witness's testimony were the unequivocal responses of the ABC agents which contained definite descriptions as to what was seen and found. The record clearly substantiates the validity of the Hearer's findings.

After carefully considering the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's Report and the exceptions filed thereto, which as above indicated, I find to be lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusion herein.

Accordingly, it is, on this 23rd day of February 1973,

DETERMINED and ORDERED that the claim of J. & M. Amusement Company for the return of \$200.00 deposited under one of the aforesaid stipulations, be and the same is hereby denied, and the same is hereby forfeited to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the sum of \$125.00 representing the appraised value of certain personalty listed in Schedule "A" attached hereto, paid under protest by Minskie Hanna to the Director to obtain return of said items, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, to be disposed of in accordance with law; and it is further

DETERMINED and ORDERED that the balance of the seized property including the alcoholic beverages and cash, as more fully set forth in Schedule "A" attached hereto, constitutes unlawful property and the same be and is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; and the said alcoholic beverages be and the same shall be retained for use of hospitals and State, county and municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

ROBERT E. BOWER
DIRECTOR

SCHEDULE "A"

37 - containers of alcoholic beverages
Miscellaneous personal property,
fixtures, furnishings and equipment;
\$19.20 - cash

8. DISCIPLINARY PROCEEDINGS - ORDER STAYING SUSPENSION.

In the Matter of Disciplinary)	
Proceedings against)	
)	
Tilton Inn, Inc.)	
S.E. Hingston Avenue and)	O R D E R
Tilton Road)	
Egg Harbor Township, N.J.,)	
Holder of Plenary Retail Consumption)	
License C-28, issued by the Township)	
Committee of the Township of)	
Egg Harbor.)	
-----)		
Licensee, Pro se		

BY THE DIRECTOR:

Application has been made in the above matter for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Good cause appearing, I shall grant the request.

Accordingly, it is, on this 16th day of February 1973,

ORDERED that the suspension heretofore imposed upon Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Egg Harbor to Tilton Inn, Inc., for premises S.E. Hingston Avenue and Tilton Road, Egg Harbor, for ten (10) days, effective 3:00 a.m. Tuesday, February 20, 1973, be and the same is hereby stayed until the entry of a further order herein.

ROBERT E. BOWER
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary
Proceedings against

Ronald Scalzo, Inc.
1297 Paterson Plank Road
Secaucus, N.J.

SUPPLEMENTAL
ORDER

Holder of Plenary Retail Consumption :
License C-30 issued by the Town :
Council of the Town of Secaucus. :

.....
Frederick Klaessig, Esq., Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On October 4, 1972 I entered Conclusions and Order herein suspending the subject license for ninety days commencing on October 17, 1972 after finding the licensee guilty of charges alleging violations of Rule 4 of State Regulation No. 20 and Rule 5 of State Regulation No. 20. Re Ronald Scalzo, Inc., Bulletin 2075, Item 5.

Prior to the effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On February 20, 1973 the appeal was dismissed by written stipulation of the attorney for the licensee and the attorney for the Division. The suspension may now be reimposed.

Accordingly, it is, on this 21st day of February, 1973

ORDERED that the ninety day suspension heretofore imposed, and stayed during the pendency of the proceedings on appeal, be reinstated against Plenary Retail Consumption License C-30 issued by the Town Council of the Town of Secaucus to Ronald Scalzo, Inc., for premises 1297 Paterson Plank Road, Secaucus, commencing at 2:00 a.m. Thursday, March 1, 1973 and terminating at 2:00 a.m. Wednesday, May 30, 1973.

Robert E. Bower,
Director

10.

ACTIVITY REPORT FOR FEBRUARY 1973

ARRESTS:		
Total number of persons arrested	-----	24
Licensees and employees	----- 8	
Bootleggers	----- 1	
Minors	----- 15	
SEIZURES:		
Distilled alcoholic beverages - gallons	-----	23.375
Wine - gallons	-----	5.40
Brewed malt alcoholic beverages - gallons	-----	36.77
COMPLAINTS AND INVESTIGATIONS:		
Inspection & visits made on assigned investigations	-----	1,093
Complaints assigned for investigation	-----	357
Investigations completed	-----	347
Investigations pending	-----	413
Premises where alcoholic beverages were gauged	-----	434
Bottles gauged	-----	8,220
Premises where violations were found	-----	154
Number of violations found	-----	197
License applications investigated	-----	9
Contacts made with other law enforcement agencies	-----	501
LABORATORY:		
Analyses made	-----	110
Refills from licensed premises - bottles	-----	82
Bottles from unlicensed premises	-----	5
Controlled dangerous substance	-----	2
IDENTIFICATION:		
Criminal fingerprint identifications made	-----	11
Persons fingerprinted for non-criminal purposes	-----	54
Identification contacts made with other law enforcement agencies	-----	156
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division	-----	25
Violations involved	-----	30
Sales to minors	----- 8	
Sale during prohibited hours	----- 4	
Poss. liquor not truly labeled	----- 9	
Gambling	----- 1	
Fraud & Front	----- 2	
Sale to non-member	----- 1	
No true books of account	----- 2	
Aiding & Abetting	----- 2	
Principle stockholder convicted of a crime	----- 1	
Cases brought by municipalities on own initiative and reported to the Division	-----	7
Violations involved	-----	7
Sales to minors	----- 5	
Sale during prohibited hours	----- 2	
Fines in lieu of disciplinary proceedings	-----	7
Total amount of fines	-----	550.00
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	30
Appeals	----- 10	
Disciplinary proceedings	----- 8	
Eligibility	----- 2	
Tax Revocations	----- 10	
STATE LICENSES AND PERMITS:		
Total number issued	-----	975
Licenses	----- 4	
Solicitors' permits	----- 50	
Employment permits	----- 76	
Disposal permits	----- 67	
Social affair permits	----- 479	
Wine permits	----- 9	
Miscellaneous permits	----- 115	
Transit insignia	----- 140	
Transit certificates	----- 35	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established	----- 0	

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

Dated: March 9, 1973

11. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary :
Proceedings against :
 :
Nancy Stica :
t/a Mr. John's Pub :
82 President Street : AMENDED ORDER
Passaic, N.J. :
 :
Holder of Plenary Retail Consumption :
License C-156 issued by the Municipal :
Board of Alcoholic Beverage Control :
of the City of Passaic. :
..... :
Licensee, Pro Se.

BY THE DIRECTOR:

On February 23, 1973 an Order was entered suspending licensee's Plenary Retail Consumption License for twenty-five days in consequence of a finding that licensee permitted one John A. Comperatore to exercise the rights and privileges of the license.

Investigation by agents of this Division has confirmed that the said John A. Comperatore is still in control of the licensed premises, although he has applied for a person-to-person transfer to his own name. In consequence of the foregoing, the license will be suspended for the balance of its term, with leave to the licensee or any bona fide transferee of the license to apply to the Director, by verified petition for the lifting of the suspension upon establishing the correction of the unlawful situation herein, but in no event sooner than twenty-five days from the commencement of the said suspension.

Accordingly, it is on this 5th day of March, 1973

ORDERED that the Order heretofore entered on February 23, 1973 be and the same is amended as follows:

ORDERED that Plenary Retail Consumption License C-156 issued by the Municipal Board of Alcoholic Beverage Control of the City of Passaic to Nancy Stica t/a Mr. John's Pub for premises 82 President Street, Passaic be and the same is hereby suspended for the balance of its term, viz. midnight, June 30, 1973 commencing at 3:00 a.m. Thursday, March 8, 1973 with leave granted to the licensee or any bona fide transferee to apply to the Director by verified petition for the lifting of such suspension upon establishing that the unlawful situation has been corrected, but in no event sooner than twenty-five days from the commencement of such suspension, i.e. 3:00 a.m. Monday, April 2, 1973.

ROBERT E. BOWER
DIRECTOR

12. STATE LICENSES - NEW APPLICATIONS FILED.

Frank M. Hartley, Inc., 1530 Palisade Ave., Fort Lee, N. J.
Application filed March 23, 1973 for plenary wholesale license.

South Jersey Distributors, Inc., 313-15-17 N. Tennessee Ave., Atlantic City, N.J.
Application filed March 26, 1973 for additional warehouse license for premises 300-318 N. Tennessee Ave., Atlantic City, N. J., operated in connection with Limited Wholesale License WL-1.


Robert E. Bower
Director