

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

BULLETIN 2243

January 27, 1977

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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

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BULLETIN 2243

1. COURT DECISIONS - ANTHONY BAGGIO v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL, ET AL.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A 4038-74

ANTHONY BAGGIO,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY, DIVISION OF  
ALCOHOLIC BEVERAGE CONTROL and  
LEONARD D. RONCO, Director,

Defendants-Respondents.

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Submitted September 21, 1976; Decided October 4, 1976.

Before Judges Lora, Crane and Michels. .

On appeal from Order and Judgment of Division of Alcoholic  
Beverage Control.

Mr. Joseph K. Greaney, attorney for appellant.

Mr. William F. Hyland, Attorney General, attorney for respondents  
(Mr. David S. Piltzer, Deputy Attorney General, of counsel and on the  
brief).

PER CURIAM.

(Appeal from the Director's decision in Re: Anthony Baggio  
Bulletin 2242, Item 5. Director affirmed. Opinion not approved  
for publication by Court Committee on Opinions).

## 2. APPELLATE DECISIONS - NUNZIO DE FALCO ET AL. v. WEST CALDWELL ET AL.

#3945

Nunzio DeFalco and Alan Greenfield  
 (in their representative capacities  
 as West Caldwell Councilmen),

Appellants,

v.

Mayor and Council of the Borough of  
 West Caldwell and Tiger Racquet Club,

Respondents.

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#4001

Nunzio DeFalco and Alan Greenfield  
 (in their representative capacities  
 as West Caldwell Councilmen),

Appellants,

v.

Mayor and Council of the Borough of  
 West Caldwell and Tiger Racquet Club,

Respondents.

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#4029

Nunzio DeFalco and Alan Greenfield  
 (in their representative capacities  
 as West Caldwell Councilmen),

Appellants,

v.

Mayor and Council of the Borough of  
 West Caldwell and Tiger Racquet Club,

Respondents.

Francis B. Rusch and Arnold D. Litt, Esqs., by Arnold D. Litt, Esq.,  
 Attorneys for Appellants  
 John J. McDonough, Esq., Attorney for Respondent, Mayor and Council  
 Bannon, Rawding and Bannon, Esqs., by James J. Bannon, III, Esq.,  
 Attorneys for Respondent, Tiger

On Appeal

CONCLUSIONS  
 AND  
 ORDER

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The subject cases are inter-related, involve substantially common questions of law and fact, and, thus, will be the subject of and consolidated in a single Hearer's report.

In Case #3945, appellants, who are members of the governing body and residents of the Borough of West Caldwell, appeal from the action of respondent Council of the Borough of West Caldwell (Council) whereby it issued a seasonal retail consumption license to respondent Tiger Racquet Club (Tiger) to expire on November 14, 1975, for premises located at 42 Fairfield Place, West Caldwell.

Appellants allege in their petition of appeal that the action of the Council was erroneous for the following reasons:

- "a. The approval by the Council of the issuance of the license to respondent constitutes a violation of N.J.S.A. 33:1-24 in that the Council breached the duties imposed upon it pursuant to said section, including, but not limited to, the duty to perform all acts to insure the 'fair, impartial, stringent and comprehensive administration' of the Provisions of said section.
- b. The approval by the Council of the issuance of the license to respondent represents an illegal delegation of the legislative and discretionary powers of government to an appointed individual in that the Council, without sufficient information before it, adopted the recommendations of the Borough Administrator as to issuance of said license.
- c. The resolution permitting the issuance of said liquor license to respondent constitutes a preference by its conditional nature and exclusionary impact vis-a-vis other prospective applicants.
- d. The issuance of said liquor license to respondent without sufficient information before the Council, pertaining to the respondent or its facility, constitutes a breach of fiduciary responsibility, a violation of the public trust and an abuse of governmental discretion.

- e. The issuance of said liquor license to respondent constitutes a violation of West Caldwell Revised Ordinance (W.C.R.O.) 8-6.1 and corresponding ABC rules and regulations (pertaining to the prohibition of minors from any premises where liquor is sold or served for consumption on said premises unless accompanied by an adult) since, by the very nature of the facility (an indoor tennis establishment), it has and will, in future, attract unescorted minors onto said premises.
- f. Given that the respondent advertised the filing of its liquor license application on May 16 and May 20, 1975, and given further that the resolution granting issuance of said liquor license was voted upon on May 20, 1975, the form of the resolution was improper--and in violation of N.J.A.C. 13:2-2.9--in that the resolution did not set forth, as a special condition, that the license shall not be issued unless and until two whole days shall have elapsed after the second publication of notice of application(excluding the day on which the second publication appeared), and that if within such period objection to the issuance is filed, the license shall not issue pending further determination of the issuing authority.
- g. By way of ordinance, W.C.R.O. 2-5.7, the Council has adopted Roberts Rules of Order with regard to the parliamentary rules of procedure followed by said Council at its meetings; pursuant to said Rules, a motion to table a resolution for further consideration takes preference over a motion to vote upon a resolution; since, in the instant case, both motions were before the Council and the Motion to Table was ruled to be out of order, there was a clear violation of said Rules.
- h. As a direct result of the violation of the Rules referred to in paragraph g. supra, there was no consideration on the merits of the objections raised by the appellants herein."

In their respective answers, respondents admit the jurisdictional matters set forth in the petition of appeal, but deny the substantive matters contained therein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Additionally, by stipulation of

counsel, various exhibits, including the minutes of Council meetings wherein the application for the license was discussed and acted upon, and the transcript of the proceedings held by the Council on June 9 and June 10, 1975 to consider the objections to the issuance of the license were received in evidence.

I shall now set forth a preliminary and a chronological summary of events which is pertinent to an understanding and determination of the issues involved herein.

Tiger Racquet Club operates a private tennis facility for the use of its members and their guests on the first floor of a building located at 42 Fairfield Place, West Caldwell. One of its two fifty-percent principal stockholders, Thomas W. Panico, is a brother-in-law of the Mayor of the Municipal respondent. The governing body of the respondent Borough consists of a Mayor and six councilmen.

Sometime in October, 1974, Mayor Rubino and two of the Borough Councilmen, Thomas Everett and Gerard Houde, who were running for re-election in November 1974, were donated the use of Tiger's facilities for an election fund raising affair.

On December 18, 1974, Tiger's attorney addressed a letter to the Borough Administrator wherein he stated that Tiger desired to apply for a seasonal retail consumption license for the service of alcoholic beverages. The matter lay dormant.

A subsequent inquiry made by Tiger in March 1975, in this respect, prompted a letter inquiry being made of this Division, by the Council, relative to the availability of a seasonal license for issuance by the Council. The reply from the Division affirmed that a seasonal license may lawfully be issued.

Thereafter, in May 1975, Tiger made formal application for the issuance of a seasonal license extending from May 1, 1975 to November 14, 1975 inclusive, and statutory notice of application therefor was published, in due form, on May 16, 1975 and May 20, 1975.

At a regular meeting held on May 20, 1975, the Council, by a vote of three in favor and two (the appellants) opposed, adopted the resolution complained of. The actual issuance of the license was made subject to "compliance with the requirements of the Division of Alcoholic Beverage Control and the approval of the agencies of the Borough of West Caldwell and the Ordinances of the Borough of West Caldwell. Said license shall not be issued until two whole days shall have elapsed after the second publication of notice of application on May 20, 1975."

The appellant objecting Councilmen filed a letter of objection on May 23, 1975 with the Borough Administrator. No other residents of the Borough filed objections. A public hearing was held on June 9 and June 10, 1975 in order to consider the objections, at which time testimony was taken from the applicant and the objectors. The Council denied the objectors' petition for a rescission of the resolution granting the seasonal license, by a vote of 4 to 0.

It appears, from the testimony and argument of counsel, that the critical issues presented for determination may be itemized, as follows: (1) was the action of the Council reasonable, considering all the facts and circumstances herein; and (2) considering all of the related facts and circumstances, was there a conflict of interest involved on the part of the Councilmen for whose benefit a fund raising function was held.

The transcript of the testimony of the hearings held by the Council on June 9 and June 10, 1975 discloses that testimony was elicited from the appellant Councilmen, the Borough Clerk-Administrator and Panico.

The appellants, Councilmen Alan Greenfield and Nunzio DeFalco testified that it was their impression that, at the meeting of the Council held on May 20, 1975, the members of the Council were to pass upon an approval for the filing of an application, and not upon the merits of the application itself. They explained that they were not aware that an application had been submitted.

Thomas Panico testified that the tennis facility is contained in a two story building, the second floor of which is used for social affairs. The tennis club has been operating since October 1973. Formal application for the subject license was filed on May 13, 1975.

At the conclusion of the hearings held on June 9 and 10, 1975 the Council adopted a resolution re-affirming its prior resolution of May 20, 1975 providing for the issuance of the subject license.

At the de novo hearing in this Division, Councilman De Falco testified that, at the agenda meeting of the Council on May 13, 1975 and again at the regular meeting of the Council on May 20, 1975, he was concerned that a question of a conflict of interest was raised because Councilmen Houde and Everett were the beneficiaries of an election fund raising affair held at Tiger's establishment in the fall of 1974. He felt that the advisability of their participating in the deliberation relative to the issuance of the license and their participation in the voting thereon should have been the subject of consideration by the Council prior to voting on the issuance thereof. Additionally, he was concerned about the possible presence of minors on premises where liquor is served.

DeFalco explained that it was his impression that on May 20, 1975, the Council was going to be requested to consider the right of Tiger to apply for the issuance of a license, and that he was not being requested to vote upon the actual issuance of a license. He felt that he had to have the reports of the police, fire and health departments, and evidence of compliance with zoning ordinances, prior to voting upon the issuance of a license.

On cross examination, the witness testified that if all of these investigative reports were in order, including conformance with the zoning ordinance, the fair thing to do would have been to vote in favor of the issuance of the license. He conceded that it was not necessary for an applicant to obtain permission of the Council to file an application.

Councilman Alan Greenfield testified in substantial corroboration of the testimony elicited from Councilman DeFalco.

Greenfield was unaware of the identity of the sponsor of the fund-raising affair. He knew it was held for the benefit of Councilmen Houde and Everett who were candidates for re-election and Councilman Rubino who was seeking the office of Mayor. He did not know who paid for the affair. He was "told" the facility was donated by Tiger for use by the Republican party.

Greenfield also expressed concern about the possible presence of minors in licensed premises.

Gerard Houde, a Borough Councilman for the past four and one half years testified that the question of the issuance of a liquor license to Tiger had been discussed by the Council early in April 1975. The Borough Attorney was instructed to ascertain from this Division whether the Borough could issue a seasonal license. Upon obtaining a favorable response from this Division, the matter of the issuance of the license was discussed at May 13 conference meeting and May 20 regular meeting of the Council.

At no time was there any discussion held concerning the introduction of a resolution permitting the applicant to apply for the issuance of the license. There was no need nor precedent for such resolution. Mayor Rubino absented himself from all discussions pertaining to the issuance of the license, because of his relationship with Panico.

The resolution authorizing the issuance of the license was conditioned upon the applicant's compliance with the other legal or regulatory requirements.

The Councilman was aware that a conflict of interest issue was raised because of the election fund-raising event



held at the premises of Tiger in October 1974 at which he and Councilmen Everett and Reiher were present. However, it was his judgment that he and those Councilmen acted properly in participating in the voting on the subject resolution because the

"...applicant had a clear case to warrant issuance of a license which was lying fallow and was for ten years, I believe. There were no other applicants for the license, and it was legitimate desire for the license. No objections whatsoever to issuing the license, and we had to conclude, as I had previously, this is perfectly balanced license issuance."

Thomas W. Panico, part owner and president of the corporate applicant, testified that Tiger donated the use of the upstairs lounge for the election fund raising function previously referred to. Tiger had also donated the use of the premises to various clubs and organized charities.

Subsequent to the termination of the de novo hearing, a question was raised as to whether one or more of the Councilmen were members of Tiger. It was thereafter established that Councilman Houde had played tennis at Tiger on three or four occasions "either as a guest of a member or as a guest of a member of the public who had reserved court time." In the latter case, the Councilman paid his share of the reserved court time. Councilman Reiher played tennis at Tiger on one occasion as a guest of a member of the public who had reserved court time.

In case #4001, appellants appealed from the action of the respondent Council whereby it issued a seasonal retail consumption license to Tiger for the period commencing on November 15, 1975 and terminating on April 30, 1976.

In case #4029, appellants appealed from the Council's action whereby it issued to Tiger a seasonal retail consumption license for the period May 1, 1976 to November 14, 1976 inclusive.

No testimony was taken on the date case #4029 was scheduled for hearing. However, testimony was elicited from all parties involved in the last mentioned appeal. The pleadings in the latter two cases and the testimony in the last appeal brought into focus issues substantially identical to those hereinabove mentioned, and others which will hereinafter be specifically considered.

At the hearing de novo to consider the validity of the Council's action in issuing the last mentioned seasonal liquor license, Councilman DeFalco testified that he voted against its issuance for reasons similar to those he had heretofore expressed. He explained that Council should await a decision

by this Division prior to acting on the subject application. He was particularly concerned about the matter of potential conflict of interest, and the possibility that a zoning violation existed. At the time he voted he had before him the letters from the Health, Police and Fire Departments "indicating that there's nothing derogatory that was taking place." To his knowledge no legal action was instituted against Tiger pertaining to a zoning violation.

Councilman Greenfield testified that he voted against the issuance of the seasonal liquor license for the same reasons that he had heretofore articulated.

Greenfield was also concerned of the possibility of a conflict of interest on the part of Councilman Morrison because at the time of the election fund-raising affair in October 1974, he was the Republican Party Chairman, and in January 1976, he replaced Councilman London as a member of the Borough Council.

Donald E. West, who has served the Borough as its Clerk and Administrator for more than five years, testified that the application for the last mentioned seasonal license filed by Tiger was presented by him to the Council together with the reports of the Police, Fire, Health and Building Departments (all of which were favorable) for examination at its agenda meeting in April so that the Council could then act upon the application at its next public meeting later that month. The Borough's Zoning Board reported its approval of the establishment to the Council.

West explained that, to his knowledge, no member of the public objected to the issuance of the license at the public meeting held by the Council in April 1976 to consider such issuance. During the past year that Tiger has operated with the liquor license, no one has complained to him concerning its operation.

## I.

I shall first consider the question raised by appellants with respect to the possible conflict of interest on the part of the Councilmen who were donated the use of Tiger's premises for a fund raising function. The following principles are pertinent in the determination of this facet of the appeal.

The granting of a liquor license has been held to involve action quasi-judicial in nature. Dufford v. Nolan, 46 N.J.L. 87 (1884). Thus, the standards of disqualifying interest applicable in the instant matter can be no less exacting than in the case of purely judicial action. Freehold v. Gelber, 26 N.J. Super. 388 (App. Div. 1953).

It is a well-established legal principle that a quasi-judicial action of a municipal body is rendered voidable by the participation of a member thereof, who is, at the time, subject to a direct or indirect private interest which is at variance with the impartial performance of his public duty. Aldom v. Roseland, 42 N.J. Super. 495 (App. Div. 1956).

The rule of law governing "disqualifying interest" is set forth in McNamara v. Saddle River Borough, 64 N.J. Super. 426, 429 (App. Div. 1960) wherein it was held:

"If there is 'interest' there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic, that is, to prevent the possibility of an official in a position of self-interest being influenced thereby to deviate from his sworn duty to be guided only by the public interest in voting as such official. Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958); Griggs v. Princeton Borough, 33 N.J. 207, 219 (1960)."

The issue of disqualification of municipal officials because of a conflict of interest is whether there is a potential for conflict, not whether the public servant succumbs to the temptation or is even aware of it (Emphasis added), Griggs v. Princeton Borough, supra. In all of these cited cases, the persons were men of integrity and were motivated by sincerity of purpose. Nevertheless, the court held that is was the existence of such interest which was decisive, not whether such interest was actually influential. Zell v. Roseland, 42 N.J. Super. 75, 82 (App. Div. 1956).

In the case of West Orange Licensed Beverage Association v. West Orange, 135 N.J. Super. 387 (App. Div. 1975), it was held that a Councilman's membership in a Tennis Club (consisting of a total of 2,400 members) and his regular use of its facilities represented a sufficient interest in the applicant for the liquor license to require his disqualification "so that not the faintest shadow be cast on the integrity of the determination of the Board", (p. 392).

The proofs herein fail to show that any of Councilmen who voted herein were members of Tiger and regularly availed themselves of its playing facilities, as was present in West Orange. However, it is uncontroverted that two of the Councilmen, namely, Everett and Houde, were donated the use of the applicant's facilities for a re-election fund raising affair five or six months prior to the filing of the application for the issuance of the seasonal license.

What constitutes a disqualifying interest or a conflict of interest is not easily definable. Individuals of integrity, whose motives are pure, may nevertheless have a conflict of interest.

In the subject case, heeding the precept articulated in West Orange, and so that not the faintest shadow be cast on the integrity of the determination made, I shall, for the purpose of deciding the central issue herein, consider the appeal as if it were a direct application by Tiger to the Director in the nature of an original application for the issuance of a seasonal license. See A. N. Butler, Inc. v. Butler, Bulletin 2171, Item 1, affirmed (App. Div. 1975), opinion not approved for publication; Re Tagliaboschi, Bulletin 1972, Item 1; Blanck v. Magnolia, 38 N.J. 484 (1962).

It is significant to note that Mayor of the Borough whose brother-in-law owns a one-half interest in Tiger absented himself from the discussions engaged in by the Council during the meetings held by it to consider the successive applications, and did not vote on the resolutions pertaining to the issuance of the license. Thus, I find no conflict of interest in this respect.

During the course of the hearing to consider the last mentioned application, appellants contended that, because Morrison participated in the fund-raising function in October 1974 as chairman of the Republican Party, which benefited from the fund raiser, and who, thereafter, more than a year later, was elected Councilman, he, by reason of his then position as party chairman, had a disqualifying interest in the said last application. Not so.

There must be some reasonable limit as to what constitutes a disqualifying interest. To hold otherwise would disqualify anyone who has participated in political activity as a Party Chairman which has resulted in his Party having received a gratuity or a donation, regardless of its extent or proximity in time, from becoming an elected or appointed official for fear, that he may at some time in the future, be charged with impure motives and acting in conflict on interest. These winds of distrust and suspicion would serve to dissuade persons of competence and who would serve in the community's interests from seeking or accepting the chairmanship of any major Party. Justice Holmes has sagely admonished: "Universal distrust creates universal incompetence." Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151 (1913). This contention is without merit.

## II.

In arriving at a determination of this matter de novo on the merits, and without regard to the action taken by the

Council, I find that there was no contest concerning the adequacy of the publication of notice of the application for the license. The Borough Clerk's testimony to the effect that the favorable reports of the Police, Fire, Health & Building Departments, the approval of the Zoning Board were available for examination by the members of the Council prior to voting on the last licensing period, was not controverted. I find that these are factors to consider in arriving at the ultimate determination herein.

Appellants assailed the issuance of the license because the tennis facilities may possibly be used by minors; and they feared that the legal prohibitions relative to sales, service, or consumption by minors of alcoholic beverages and the presence of minors on premises where alcoholic beverages are served would be violated.

At best, the aforesaid fears expressed concerning the effect of the issuance of the license are conjectural. In any event, it must be assumed that all licensees are well aware of the fact that an application for the renewal of the license must be made periodically. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

Additionally, in arriving at a determination of this matter de novo on the merits, I find this case totally unlike Lyons Farm Tavern, Inc. v. Newark, 55 N.J. 292 (1970) wherein numerous individual objectors and organizations including a hospital which contained a school of nursing appeared to voice their strenuous objections to a place-to-place transfer occasioned by a premises-enlargement. In Lyons Farm Tavern, much of the locality was devoted to residences. Area residents and hospital employees (male and female) had been molested. In Lyons Farm, the Supreme Court affirmed the local Board's denial of the place-to-place transfer and held that the Board's finding that the paramount equities favored the objectors was reasonably grounded. None of these factors or the other factors considered by the Court in Lyons Farm are present in the matter sub judice.

In this connection, it is significant that a sketch of the area, furnished at my request, indicates that Tiger is located in an industrial area; and that the nearest residence to Tiger in the Borough is located in excess of 2,000 feet distant therefrom.

In response to the question of zoning raised by appellants, I quote from the opinion of Gaulkin, J.A.D. in Lubliner v. Paterson Board of Alcoholic Beverage Control, 59 N.J. Super. 419 (1960) at p. 433:

"Appellants argue that the approval of the transfer was illegal and erroneous because the Paterson zoning ordinance prohibits a tavern in this location. It is not clear from the evidence that the ordinance does so provide, but even if it does that does not make the grant of the transfer improper or its approval by the Director error. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street, but he is not required to obtain it before the grant of the transfer."

The Appellate Division affirmed the grant of the license transfer and its decision was affirmed by the Supreme Court (Lubliner v. Paterson Board of Alcoholic Beverage Control, 33 N.J. 428 (1960)), in which case the opinion (at p. 435) by Judge Jacobs, after remarking that the zoning contention had apparently been abandoned, contained the following language:

"... In dealing with that contention (re the zoning ordinance) the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available." (Underscoring added)

In reviewing the record herein, including the exhibits and the testimony presented, I find that appellants have failed to establish that the actions of the Council were erroneous and should be reversed. Rule 14 of State Regulation No. 15. I, therefore, recommend that for the reasons above expressed, that the subject licenses be issued in accordance with the applications made therefor subject to compliance with local regulatory requirements.

It is, further, recommended that the actions of the Council be affirmed and the appeals herein be dismissed.

### Conclusions and Order

Written Exceptions to the Hearer's report, with supportive argument, were filed by appellants pursuant to Rule 14 of State Regulation No. 15. Answers to the Exceptions, with supportive argument, were filed by the attorneys for the respective respondents.

In their Exceptions, appellants argue that the participation by the then Councilman Alan London ( he is no longer a member of the Council ) in caucus meetings constituted a conflict of interest. The record is clear that London disqualified himself, and did not vote on the resolution granting the issuance of the subject license. If London improperly participated in caucus meetings prior to the formal vote as alleged by appellant, that proof, if it exists, is dehors the record in the three consolidated cases. Therefore, it cannot be considered as competent evidence in arriving at a final determination herein.

In any event, I find appellants' argument devoid of merit for another reason. So that not the faintest shadow be cast upon the determination made by the Council herein, the Hearer properly considered the appeals as if a direct application were made by Tiger to the Director for the issuance of a seasonal license. He thereby reached his recommended finding of the central issue herein strictly de novo, on the merits, and without regard to the action taken by the Council. See, A. N. Butler, Inc. v. Butler, Bulletin 2171, Item 1, affirmed (App. Div. 1975), opinion not approved for publication; Re Tagliaboschi, Bulletin 1972, Item 1; Blanck v. Magnolia, 38 N.J. 484 (1962).

Fear was expressed by appellants that the rules forbidding sales, service or consumption by minors of alcoholic beverages on licensed premises would be violated. As indicated by the Hearer, they are conjectural. Furthermore, it must be assumed that all licensees are aware of the fact that an application for the renewal of a license must be made annually, and that if licensed premises are operated in violation of the Alcoholic Beverage Law, a licensee subjects its license to a suspension or revocation. Vide, Jesswell v. Newark, Bulletin 1847, Item 5, and cases cited therein.

In arriving at my conclusions herein, I have noted that it is uncontroverted that Tiger is located in an industrial area, and that the nearest residence is located in excess of 2,000 feet therefrom.

I further find that the Hearer properly distinguished the subject case from Lyons Farm Tavern, Inc. v. Newark, 55 N.J. 292 (1970) wherein numerous individual objectors and organizations including a hospital which contained a school of nursing appeared

to voice their strenuous objections to a place-to-place transfer occasioned by a premises-enlargement. In Lyons Farm Tavern, much of the locality was devoted to residences. Area residents and hospital employees (male and female) had been molested. In Lyons Farm, the Supreme Court affirmed the local Board's denial of the place-to-place transfer and held that the Board's finding that the paramount equities favored the objectors was reasonably grounded. It is clear as crystal that these factors are not present in the matter sub judice.

Thus, having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the argument of counsel, the Hearer's report, the Exceptions thereto, and the Answers to the said Exceptions, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of October 1976,

ORDERED that the Council be and is hereby ordered to issue a seasonal retail consumption license to Tiger Racquet Club for the period from May 15, 1975 to November 14, 1975 inclusive; for the period from November 15, 1975 to April 30, 1976 inclusive; and for the period from May 1, 1976 to November 14, 1976 inclusive, each of which shall be issued nunc pro tunc, in accordance with the applications filed therefor; and it is further

ORDERED that the actions of the Council be and the same are hereby affirmed, and the appeals herein be and the same are hereby dismissed.

Joseph H. Lerner  
Director



3. ADVISORY OPINION LETTER - AUTHORIZATION TO MANUFACTURERS AND WHOLESALERS TO FURNISH WINE LISTS TO RETAILERS - WINE LISTS TO BE INCLUDED UNDER RULE 1(b) OF STATE REGULATION NO. 21.

L. Profumo, Jr., President  
Reitman Industries  
10 Patton Drive  
West Caldwell, New Jersey 07006

Dear Mr. Profumo:

I am in receipt of your letter dated November 4, 1976 wherein you request that your company be authorized to supply wine lists to restaurants and taverns served by your company, with the various wine lists supplied by your supplier.

Rule 1(b) of State Regulation No. 21 which lists certain items which may be furnished by a New Jersey licensed manufacturer or wholesaler to retailers, for use in the retailers' licensed premises, does not include wine lists as one of the permissible items. You state that these wine lists are not expensive and that they will be a "great benefit to the wholesaler, restaurant and the consumer to have these wine lists on the table."

I have carefully considered your request and have reviewed the applicable regulation.

I note that Rule 1(b) (3) permits the furnishing of "other advertising specialties for which written approval has first been obtained from the Director of Alcoholic Beverage Control; provided that the cost of any single item shall be nominal and the total cost of all such items supplied by any one manufacturer or wholesaler to any one retail establishment in any calendar year shall not exceed Fifty (\$50.00) Dollars."

Accordingly, I hereby authorize your company, and all other New Jersey manufacturers or wholesalers to furnish wine lists to retailers for use on the retailers' licensed premises, in accordance with the authority of the aforementioned Rule.

Dated: November 10, 1976

JOSEPH H. LERNER  
DIRECTOR

4. STATE LICENSES - NEW APPLICATIONS FILED.

7-UP Bottling Company of Camden, Inc., t/a Un-Wine-Der, 549 South Broadway  
Gloucester, New Jersey.

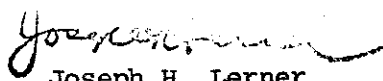
Application filed January 20, 1977 for plenary winery license.

Bokma USA Inc., 252 Nassau St., Princeton, N. J.

Application filed January 25, 1977 for plenary wholesale license.

Cortco International Corporation, Inc., 318 Jefferson St., Newark, N. J.

Application filed January 25, 1977 for place-to-place transfer of Limited  
Wholesale License WL-64 from 67-69 Cottage St., Jersey City, N. J.

  
Joseph H. Lerner  
Director