

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Soutes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2385

JANUARY 22, 1981

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STATE OF NEW JERSEY
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JANUARY 22, 1981

1. APPELLATE DECISIONS - 432 NORTH RHODE ISLAND AVE. CORP. v. ATLANTIC CITY.

#4428

432 North Rhode Island Ave. Corp.,

Appellant,

vs.

Board of Commissioners of the City
of Atlantic City,

Respondent.

CONCLUSIONS

AND

ORDER

Sherman L. Kendis, Esq., Attorney for Appellant.
Matthew H. Powals, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City which, on October 11, 1979, denied appellant's application to renew its license for the 1979-80 license term.

Upon filing the within appeal, the Director, by Order to Show Cause dated November 15, 1979, extended the subject license pending determination of the appeal.

The basis for the denial of renewal was the Special Ruling of September 26, 1979 by the Director, Division of Alcoholic Beverage Control. This ruling held that renewal of the subject license would be contrary to the public interest because of appellant's failure to comply with the provisions of N.J.S.A. 33:1-12.39 concerning inactive licenses.

Subsequent to the filing of this appeal, the appellant submitted a Verified Petition requesting relief in accordance with N.J.S.A. 33:1-12.39. Said petition established "good faith" efforts to activate this license since it terminated active operations in 1976. The "good faith" efforts included the purchase of premises to site the license, and the filing of a formal application for transfer. While said transfer application was denied for reasons hereinafter noted, I am satisfied that relief pursuant to N.J.S.A. 33:1-12.39 is warranted herein.

My Special Ruling of December 5, 1979 found that an approval of a place-to-place transfer application by appellant would be contrary to the public interest. This was not predicated upon any adverse findings by the Task Force as to the suitability of

of the premises sought to be licensed or the financing attendant to the purchase of the proposed situs; but, rather mandated because the appellant had not complied with the provisions concerning inactive licenses, and inability to renew absent waiver by the Director.

Therefore, by my finding herein that the appellant has established "good faith" efforts pursuant to N.J.S.A. 33:1-12.39 to warrant a further application for renewal of its license for the 1979-80 license term, the underlying objections and basis for my Special Rulings of September 26, 1979 and December 5, 1979 no longer exist.

Thus, I shall vacate my Special Rulings of those dates and shall find that approvals of those applications (renewal and place-to-place transfer) would not be contrary to the public interest. N.J.A.C. 13:2-3-10. The action of the Board of Commissioners shall, thereupon, be reversed and both applications will be remanded for its consideration and the exercise of its discretion with respect thereto.

Accordingly, it is, on this 14th day of February, 1980,

ORDERED that my Special Rulings of September 26, 1979 and December 5, 1979 be and the same are hereby vacated; and it is further

ORDERED and determined that the appellant's application to renew its license for the 1979-80 license term and appellant's application to transfer its license to 2000 Atlantic Avenue are not contrary to the public interest (N.J.A.C. 13:2-3.10); and it is further

ORDERED that the action of the Board of Commissioners of the City of Atlantic City be and the same is hereby reversed, and the applications in question be and are hereby remanded to the Board of Commissioners to act upon such applications in any way consistent with its testimony.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - WILLIAM F. KOGUT v. WALLINGTON.

#4403

William F. Kogut,
t/a John's Liquors,

Appellant,

v.

Municipal Board of Alcoholic
Beverage Control of the
Borough of Wallington,

Respondent.

CONCLUSIONS

AND

ORDER

Arthur N. Chagaris, Esq., Attorney for Appellant.
Gruen & Ritvo, Esqs., by Harold Ritvo, Esq., Attorneys for
Respondent.

Initial Decision Below

Hon. Gerald T. Foley, Jr., Administrative Law Judge

Dated: January 17, 1980 - Received: January 21, 1980

BY THE DIRECTOR:

No written Exceptions to the Initial Decision were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the written summations of the parties, and the Initial Decision, I concur in the findings and recommendations of the Administrative Law Judge, except as hereinafter noted, and adopt same as my conclusions herein.

I modify Finding No. 14 insofar as it does not completely state the existing provisions of the Alcoholic Beverage Law as it relates to hours of sale. N.J.S.A. 33:1-40.3 and N.J.-A.C. 13:2-38.1 provide that malt alcoholic beverage sales in original container for off-premises consumption must be permitted during the hours that on-premises open container sales are allowed in a municipality. Thus, in the Borough of Wallington, the holder of a Plenary Retail Distribution License may remain open until 3:00 a.m. to sell malt alcoholic beverages.

The finding herein is a disposition of all factors referable to the Alcoholic Beverage Law. The ultimate ability of the appellant to actively operate at the proposed location is dependant upon local zoning regulations, conformity to which is always an implied condition in any place-to-place transfer approval. Holiday Inn of Paramus-Parkway v. Paramus, et al., Bulletin 2315, Item 3.

Accordingly, it is, on this 3rd day of March, 1980,

ORDERED that the action of the Mayor and Council of the Borough of Wallington be and the same is hereby reversed; and it is further

ORDERED that the Mayor and Council of the Borough of Wallington be and are hereby directed to approve appellant's application for a place-to-place transfer in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

APPENDIX

INITIAL DECISION BELOW

WILLIAM F. KOGUT, t/a)	<u>INITIAL DECISION</u>
JOHN'S LIQUORS,)	
)	OAL DKT. NO. ABC 5180-79
PETITIONER ,)	AGENCY DKT. NO: APPEAL NO. 4403
)	
V.)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL, BOROUGH OF)	
WALLINGTON,)	
)	
RESPONDENT)	

APPEARANCES:

Arthur N. Chagaris, Esq., for Petitioner

Gruenand Ritvo, Esqs., by Harold Ritvo, Esq., for Respondent

BEFORE THE HONORABLE GERALD T. FOLEY, JR., A.L.J.:

On December 13, 1979 a hearing was held on the appeal of William F. Kogut, trading as John's Liquors, to the Director of the Division of Alcoholic Beverage Control, from a resolution and order of the Mayor and Council of the Borough of Wallington dated September 13, 1979 which denied his application to transfer his plenary retail distribution license from 93 Wallington Avenue in Wallington to 375 Paterson Avenue in that municipality.

Although the third paragraph of the resolution indicates the application was approved, language at its end is to the effect that it was denied. I pointed this out at the outset of the hearing and counsel stated that the application was denied. There was no transcript of what transpired before the Mayor and Council on September 13, 1979.

The matter was filed as a contested case on November 19, 1979.

The record was closed on January 4, 1980 with the receipt of petitioner's posthearing memorandum.

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At the hearing the following joint exhibits were admitted into evidence:

1. J-1, Developer's agreement dated May 22, 1975 between James Nuckel and Borough of Wallington and Planning Board of the Borough of Wallington to develop the zone in which 375 Paterson Avenue is located.
2. J-2, an ordinance to amend chapter VIII of the "Revised General Ordinances of the Borough of Wallington, 1970", approved April 25, 1973. It states among other things, that no plenary retail consumption license or plenary retail distribution license shall be issued for or transferred to any premises within 500 feet of any other premises for which a plenary retail consumption license or a plenary retail distribution license is at that time outstanding.

The following exhibits were admitted during the hearing:

1. R-1, Minutes of Mayor and Council meeting of September 13, 1979, specifically pages 177 and 178 thereof.
2. R-2, an amendment of the zoning ordinance of Wallington, adopted November 15, 1972, specifically page two setting forth permitted uses, in the zone in the instant matter, of business offices and professional offices, retail department store, food supermarket type store and medical arts building. Additionally, it was required that any retail department store or food supermarket type store in the zone contain no less than 20,000 square feet and no more than 50,000 square feet.
3. R-3, Memorandum from Alvin E. Gershen, Associates to the Borough of Wallington concerning alternative zoning recommendations for the Roehrs Tract, specifically page 2, 2a. (1) and (2) and page 6, 2e. (2) (a).
4. R-4, Transcript of Decision in McDonald's Corporation v. The Borough of Wallington et al (Law Div. L-27001-77 P.W.) dated October 17, 1978.
5. P-1, Reproduction of site plan showing, among other locations, that of the proposed liquor store.
6. P-2, Copy of executed lease agreement dated July 17, 1979 between Wallington Plaza, James Nuckel, landlord and William Koget (Kogut), tenant for lease of 33 feet by 85 feet to be assigned as a liquor store, providing the tenant transfers his liquor license to Wallington Plaza.

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7. P-3, Sketch of proposed liquor store.
8. P-4, The Herald News, Passaic, New Jersey bill to William Kogut showing \$2.00 credit for classified advertising retail distribution license, August 5 to 12, 1979.
9. P-5, Affidavit of Bernice Abelone of the Herald News that notice of William F. Kogut's application for the place to place transfer was published the weeks of August 5 and 12, 1979, twice a week with copy of the notice of intention.
10. P-6, Map drawn by Kenneth C. B. Job, P.E., Borough Engineer, showing portal to portal distances from Stan's Hut Liquor Store and Frank's Wine and Liquor Store to the proposed liquor store. The sketch is dated April 21, 1976 and is not drawn to scale.
11. R-5, Original Roehrs Tract zoning ordinance approved October 25, 1972.

The respondent produced one witness in support of its action. She was Lorraine Klamerus, the Borough Clerk of the Borough of Wallington. She stated she is charged with the duty of keeping the minutes of Mayor and Council meetings and she identified R-1 as the minutes she had transcribed for the September 13, 1978 meeting. That was when Mr. Kogut, trading as John's Liquor's, applied for a transfer of license. She stated there were several people present objecting to the transfer. Mr. Kogut was present with his attorney, Mr. Konopka and Mr. Dennis Maycher, an attorney, was there for Scotty's Corner Bar and Liquors, another license holder. She said she thought they were about the only people who were there. The witness stated that Mr. Kogut applied for the license and there was a discussion between the Mayor and Council, Mr. Konopka, Mr. Maycher, and then a resolution. She said the Mayor asked her to read the resolution and a motion was made by Councilman Danelski and seconded by Councilman Pavlick to deny the transfer of the liquor license into that area "due to the controversy of the residents in the area and that wasn't in the best interest of the Borough."

She stated that a prior application for a place to place transfer to the particular location was denied in 1978 because it was not within the zoning laws of that particular parcel of land, the main reason, and also because it was not in the best interest of the residents and also the family members of the license which was being transferred objected to the transfer.

With respect to the Kogut application the witness said the Mayor and Council, herself and other officials of the Borough received phone calls and personal calls objecting to the transfer of the license into that area. The residents behind the shopping area and along Mt. Pleasant Avenue which is in the area of the shopping center called to object. She said she was sure the zoning ordinance had a lot to do with the determination of the governing body to deny the transfer. She thought the area had been the subject of a lot of discussion over the last several years and that each member of the governing body was fully familiar with the area. She said when this area was being planned, she was sure that the Mayor and Council had very uniquely, very specially considered purposes in mind for that area.

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On cross-examination the witness stated that a notice of the hearing was published. She said she received a telephone call from Mr. Scola, the owner and resident of Scotty's Corner Liquors, a package liquor store. A man named Bihr called her and objected to the element. Mr. Bihr did not appear at the hearing. Mr. Scola did. He was the sole objector. She stated that the minutes she took and transcribed were typed by a girl in her office. It was not a verbatim record.

The witness stated that the prior denial involved a consumption license. She stated she did not believe Mr. Kogut had ever been issued a citation or other notice of violation of any liquor ordinance in the Borough or by the State. He had been operating his liquor store for several years.

She stated the Mayor and Council in adopting the zoning ordinance wanted the shopping area to be special and unique with stores that were different than any other stores in Wallington. She indicated that the shopping center consisted of a Stop and Shop, a food chain, Genovese Drugs, a retail department store that sells many things other than drugs, and satellite stores in between. These were interpreted by Ms. Klamerus as being retail department stores.

The witness said the planned or proposed liquor store was more than 500 feet from the next closest liquor store. The liquor license ordinance was satisfied. The zoning portion was in question.

The witness read the permitted uses set forth on page two of R-2 in evidence, (a) business offices and professional offices, (b) retail department store, (c) food supermarket type store and (d) medical arts building. She said there is a supermarket and a retail department store. The ordinance did not prohibit a retail liquor store. She stated the McDonald's case involved a food consumption store.

On redirect examination the witness said if someone applied for a use that was not specifically permitted by the ordinance, there would have to be an application to the zoning board.

The witness said she was present with the members of the governing body when the instant matter was discussed. She believed there was discussion between attorneys Konopka and Maycher and so forth and so on, Mr. Kogut." She thought the Mayor and Council decided on the discussion plus the discussion at caucus regarding the zoning law tract.

On recross examination the witness thought the satellite stores would be under retail department store and they are much smaller than Genovese and Stop and Shop. Shown P-1, the reproduction of the site plan, she said it was the shopping area. The Stop and Shop was in its correct location and Mande's is next to it. Next would be the proposed liquor store, then a beauty salon, a Radio Shack, a camera shop, Fayva Shoes, I Am Woman, Washington Savings and Loan. Card and Gift Gallery, a book store and then Genovese Drugs. The witness said that all the stores seemed to be there, but she did not know if they were in the correct order. Following a brief further redirect examination, the respondent rested.

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William F. Kogut testified that he is the sole owner of John's Wines and Liquors, 93 Wallington Avenue in Wallington. It is a retail distribution liquor store. His license to operate is on the premises. He has held his license since December 8, 1975. Prior to that he was connected, since 1970, with a tavern his parents owned in Passaic. He did the books, inventory, odds and ends.

Mr. Kogut said he would be 25 years old this month (December, 1979). He stated since he has had his liquor license, he has never been issued any citations for any violations of any ordinance, statute or regulation.

He stated he would like to transfer the license to Wallington Shopping Plaza, 375 Wallington Avenue. He identified P-2 in evidence, his lease with James Nuckel. The contingency was that "the store is licensed as transfer and store in operation."

He identified P-3 as a rough sketch of the way the store is to be set up. He indicated how the store was to be made up. There are 2805 square feet, 33 feet wide by 85 feet long.

In preparing for the application, the witness said he put in two publications of the transfer in the newspapers. These are P-4 and P-5. Shown P-6, he said he was familiar with the general area that was represented in the sketch. Frank's has become Scotty's Liquors and Stan's is now the Chipperon Pub, a lounge and restaurant with no package liquor. Scotty's sells package liquor.

According to the sketch there were 718 feet one way and 694 feet another way between Scotty's and his proposed site. The Chipperon is 520 feet away one way and 550 feet another. The witness said he was aware of the liquor ordinance and its 500 feet requirement.

He was also aware of the zoning ordinance. He regarded his business as retail. Assuming he obtained his transfer he would have to apply for a certificate of occupancy from the Borough zoning officer. He then named the stores in the shopping center. No store sells alcoholic beverages.

He stated the prior application involved a consumption license for a tavern. His is distribution, strictly packages to go. His purpose in re-locating is to better assist people in the concept of one-stop shopping. There was no liquor store in the shopping center, Scotty's being behind the bank which is on the corner. He stated he was an objector to the prior application because he felt a consumption license was not the type to be in there. Following the other retail stores that are there, a distribution license would be more suitable. Additionally, the borough wanted all the stores to be closed at 10:00 P.M. That is when his would have to close by State law.

Mr. Kogut is a resident of Wallington. He and his wife shop at the center. At ten o'clock everything is closed.

On cross-examination Mr. Kogut said it was his understanding his store was permitted in the zone. The copy of the zoning ordinance he obtained from the borough clerk said business, not business offices. Based on the

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zoning ordinance in evidence, he regarded his store as a retail department store but he admitted it did not contain 20,000 square feet. He said his attorney indicated to the Mayor and Council that his was a distribution license and that the prior case was not relevant. He did not discuss it at all. He did not recall if his attorney pointed out that this was a distribution license.

John Bowers, Jr. testified he is a licensed real estate broker in New Jersey and a developer specializing in strip or convenience type shopping centers such as the Wallington Shopping Center which he described as a convenient shopping center for people within one and one half to three miles to buy their everyday needs. The center is designed with parking in the front and a good tenant mix for everyday purchases.

He stated he has been familiar with the Wallington Shopping Plaza area for 15 years when it was the Roehrs Nursery consisting of 27 acres. The shopping center today occupies seven or eight acres, the balance of the twenty-two acres being occupied by one family homes.

The witness has rented all the stores in the center and they have been in occupancy for two and a half to three years. He stated he is familiar with all the stores. Stop and Shop has about 30,000 square feet, Genovese Drugs about 24,000 square feet and the smaller, service or satellite stores total about 27,000 square feet.

He characterized all the stores as service stores, serving the daily needs of the people within three miles. In his opinion, the proposed liquor store fell within the uses of the other satellite stores. He stated the liquor store is an ideal personal service store, complimenting, for example, the Stop and Shop.

The witness stated he negotiated the lease between Mr. Kogut and Mr. Nuckel. In addition to the liquor store license he indicated Mr. Kogut would need a certificate of occupancy.

He stated the present tenants blend and make sense, that the shopping center was moderately successful. He then recounted the stores, the Stop and Shop supermarket, Genovese Drugs, Mande's dress chain, Fayva Shoes, Radio Shack, a beauty salon, a card and gift store and a bank, all servicing the needs of the community.

In his opinion there was a need for a retail liquor store as it went hand in hand with the whole concept of the convenient shopping center.

On cross-examination the witness stated that he did not know where the satellite stores fitted into the zoning ordinance. They are less than 20,000 square feet so that they do not fit in.

Respondent recalled Ms. Klamerus to identify the original Roehrs Tract zoning ordinance, adopted October 25, 1972.

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In a matter such as this, my function is to conduct a de novo hearing of the appeal and make the necessary factual and legal determinations on the record before me. I must abide by the municipality's ruling so long as its exercise of judgment and discretion was reasonable, Farwood v. Rocco, 33 N. J. 404, 414 (1960), or, as was said in Lyons Farms Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292, 303 (1970), if reasonable support for it can be found in the record. However, where the municipal action was unreasonable or improperly grounded, I will grant such relief or take such action as is appropriate, Farwood v. Rocco, supra, page 414.

Procedurally, in a case such as this, the respondent shall first present evidence in support of the action of the municipal issuing authority, but the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with the appellant or petitioner, N.J.A.C. 13:2-17.6.

I have listened to the testimony of the three witnesses, have observed their demeanor, and assessed their credibility, have reviewed the exhibits, according each the weight, in my judgment it deserves and have read the transcript of the testimony. In my judgment from the respondent's evidence itself and also from that introduced by the petitioner, the action of the respondent was erroneous and unreasonable. I therefore reverse the resolution and order appealed from and order that the application for the place to place transfer be granted.

Factually, I FIND that:

1. From a review of exhibit R-1 in evidence, the minutes of the Mayor and Council meeting of September 13, 1979, page 178, the application of William F. Kogut for the transfer of a plenary retail distribution license from 93 Wallington Avenue to 375 Paterson Avenue was denied due to "heavy controversy of residents in that area" (the Shopping Mall area) and "the transfer not being in the best interest of the Community."
2. The phrases "heavy controversy of residents in that area" and "the transfer not being in the best interest of the Community" are meaningless and merely conclusionary because, from a review of the record, page 177 of R-1 in evidence, there is no evidence to support the two conclusions.
3. There was only one objector, Scotty's Corner Liquors.
4. Notice of the application for the place to place transfer was published by Mr. Kogut in the Herald News twice a week the weeks of August 5 and 12, 1979 (P-4 and P-5).
5. The plenary retail distribution license of William F. Kogut, if transferred to its proposed site in the Wallington Shopping Plaza, 375 Paterson Avenue, would not be in violation of the 500 feet requirement of Section 8-2.4 of the Wallington liquor license ordinance. (J-2).

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6. William F. Kogut is 25 years of age, married, a resident of Wallington, New Jersey and the sole owner of John's Wines and Liquors, 93 Wallington Avenue, Wallington, New Jersey.
7. Mr. Kogut has been the holder of a plenary retail distribution license since December 8, 1975.
8. Mr. Kogut has never been issued any citation for any violations of any liquor ordinances, statutes or regulations.
9. Mr. Kogut has the intention and desire to transfer his plenary retail distribution license to a proposed store in the Wallington Shopping Plaza, 375 Paterson Avenue. To effectuate this intention, he, on July 17, 1979, executed a lease with James Nuckel, the landlord, for a liquor store in the Wallington Plaza. The lease contains a contingency that Mr. Kogut must transfer his liquor license to the premises which are the subject of the lease (P-2).
10. Mr. Kogut is aware of exactly how the proposed liquor store will be made up and of what it will consist. (P-3).
11. The proposed liquor store is 718 feet one way and 694 feet another from Scotty's Liquors, a package store which is located not in the shopping center but rather across Mt. Pleasant Avenue from it, on the northerly corner of the intersection of Paterson Avenue and Mt. Pleasant Avenue. (P-6) (J-2).
12. The proposed liquor store is 520 feet one way and 550 feet another from the Chipperon Pub, a lounge and restaurant with no package liquor, located on the easterly corner of the intersection of Paterson Avenue and Johnson Avenue, outside the area of the shopping center.
13. At present, no store that is occupied and operating in the shopping center sells alcoholic beverages. The stores are closed by 10:00 P.M.
14. Mr. Kogut's proposed retail distribution liquor store would be required to be closed by 10:00 P.M. pursuant to law of the State of New Jersey.
15. The Wallington Shopping Center, to where Mr. Kogut wishes to transfer his plenary retail distribution license, is a convenient shopping area for people within one and one half to three miles to by their every day needs.
16. The shopping center consists of a supermarket, the Stop and Shop, a Genovese Drugs which sells a variety of goods, a Mande's dress shop, a Fayva shoe store, a Radio Shack, a beauty salon, a card and gift store and a bank. These are stores that service the daily needs of people.

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17. The shopping center occupies seven or eight acres of what was Roehrs Nursery which consisted of 27 acres. The balance of what was once Roehrs Nursery is occupied by one family homes. Not one individual from these homes objected to Mr. Kogut's application on September 13, 1979 as Mr. Scola, the owner of Scotty's, resides at the licensed premises.
18. Mr. Kogut's proposed liquor store would blend and mix well with the other stores in the shopping center in servicing in a personal way the daily needs of the community.

In my judgment, the stated reasons for the denial of Mr. Kogut's application are contrary to the facts. I can find nothing in the record to reasonably support the resolution and order. I do not know the meaning of the phrase, "due to heavy controversy of residents in that (the Shopping Mall) area." There are obviously many people who live in the immediate vicinity of the shopping center in their one family homes. Yet, only one person, Mr. Scola, a business competitor, appeared at the hearing to object. I fail to discern from the record any controversy.

The second reason for the denial was the general and often used phrase, "the transfer not being in the best interest of the Community." From the testimony of Mr. Kogut and Mr. Bowers, it is clear to me that the transfer of Mr. Kogut's plenary retail distribution license to the shopping center would, on the contrary, be in the best interest of the community. It is a fact that these smaller, satellite stores exist. They are functioning and providing personal services to the people as are Stop and Shop and Genovese Drugs. Mr. Kogut's selling of package liquor goods would add a new dimension to the shopping center, fill a vacant store and further the concept of one-stop shopping for the people in the area.

It should be noted that the denial was not based on any violation of any zoning ordinance. There were two reasons given for the denial and violation of a zoning ordinance was not one of them. The following excerpt from Lubliner v. Board of Alcoholic Beverage Control for the City of Paterson, 59 N. J. Super. 419, 433 (App. Div. 1960), modified 33 N. J. 428 (1960) is most appropriate:

"Appellants argue that the approval of the transfer was illegal and erroneous because the Paterson zoning ordinance prohibits a tavern at 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."

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Also noteworthy is the following language of our Supreme Court in Lubliner, supra at pages 434 and 435 where it is said:

"At the close of his Conclusions and Order, the Director referred to a contention by the objectors that the transfer would violate the local zoning ordinance and noted that no "definite probative evidence on that score" had been presented and that generally the Division of Alcoholic Beverage Control is not the proper forum to decide whether the location of a "liquor license and restaurant at the premises would be in violation of the zoning law."..."These contentions were rejected in the Appellate Division and in this Court they have been renewed with the exception of the zoning contention which has apparently been abandoned. In dealing with that contention 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."

I therefore CONCLUDE that the Mayor and Council of the Borough of Wallington acted unreasonably in denying the application of William F. Kogut, trading as John's Liquors, for a place to place transfer of his plenary retail distribution license from 93 Wallington Avenue, Wallington, New Jersey to 375 Paterson Avenue in the Wallington Shopping Plaza, Wallington, New Jersey and I ORDER that the resolution and order appealed from be reversed and I further ORDER that the application of William F. Kogut, trading as John's Liquors, for the previously described place to place transfer be granted.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

- 3. DISCIPLINARY PROCEEDINGS - DIRECTOR ACCEPTS PLEA OF NON VULT TO TWO CHARGES ALLEGING (1) ALLOWING, SUFFERING AND PERMITTING BOOKMAKING UPON LICENSED PREMISES; (2) ALLOWING, SUFFERING AND PERMITTING OBSCENE AND INDECENT MATTER (MAGAZINES) UPON LICENSED PREMISES - BUT REJECTING STIPULATION SETTING FORTH DATES OF SUSPENSION WHICH MAY BE FIXED ONLY BY DIRECTOR - LICENSE SUSPENDED 50 DAYS.

In the Matter of Disciplinary Proceedings against

R.C.P. Corporation
t/a Feuerstein's Tavern
136 River Styx Road
Hopatcong, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License No. 1912-33-014-001 issued by the Borough Council of the Borough of Hopatcong.

S-12,258

X-41,226-D

Albert Dalena and Samuel DeAngelis, Esqs., Attorneys for Licensee.
Charles J. Mysak, Esq., Deputy Attorney General for the Division.

Initial Decision Below

Hon. Thomas E. Clancy, Administrative Law Judge

DATED: February 18, 1980 - RECEIVED: February 19, 1980

BY THE DIRECTOR:

Charges were filed against the licensee as follows:

1. On or about December 15, 1978 and January 5, 1979, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in sports pools; and on the aforementioned dates, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda and other writings pertaining to the said gambling activity; in violation of N.J.A.C. 13:2-23.7.
2. On or about January 5, 1979, you allowed, permitted and suffered in or upon your licensed premises, or had in your possession, obscene and indecent matter, viz., magazines; in violation of N.J.A.C. 13:2-23.14.

At the hearing on these charges at the Office of Administrative Law, but prior to the taking of testimony, a stipulation was entered into by the licensee and the Division as set forth in the Initial Decision attached hereto and made part hereof. In accordance with the aforesaid stipulation I shall accept the plea of non vult entered by the licensee to the charges herein and impose a 50 days license suspension.

However, I shall reject the paragraph C of the stipulation which states that the said suspension shall commence on or about March 1, 1980 because the dates of suspension may be fixed only by the Director in these matters.

Accordingly, it is, on this 29th day of February, 1980,

ORDERED that Plenary Retail Consumption License No. 1912-33-014-001 issued by the Borough Council of the Borough of Hopatcong to R.C.P. Corporation, t/a Feuerstein's Tavern for premises 136 River Styx Road, Hopatcong be and the same is hereby suspended for fifty (50) days commencing 3:00 a.m. on Wednesday, March 5, 1980 and terminating 3:00 a.m. on Thursday, April 24, 1980.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

In the Matter of Disciplinary)	<u>INITIAL DECISION</u>
Proceedings against)	
R.C. P. Corporation)	O.A.L. DKT. # ABC 0147-80
t/a Feuerstein's Tavern)	Agency Dkt. #S-12,258

APPEARANCES:

Charles J. Mysak, Esq., Deputy Attorney General,
on behalf of the New Jersey Division of Alcoholic
Beverage Control

Albert Dalena and Samuel De Angelis, Esqs., on
behalf of Respondent, R.C.P. Corp.

BEFORE THE HONORABLE THOMAS E. CLANCY, A.L.J.:

The New Jersey Division of Alcoholic Beverage Control charged the Respondent with alleged violations of New Jersey Administrative Code provisions 13:2-23.7 and 13:2-23.14.

At an administrative judicial proceeding held on February 20, 1980, the parties stipulated that:

- (a) No factual dispute exists with respect to the charges made against the Respondent;
- (b) Respondent should be allowed to enter pleas of non-vult to the charges made - in exchange for the imposition of a fifty (50) day suspension of Respondent's license;
- (c) The fifty (50) day suspension of Respondent's license shall commence on or about March 1, 1980; and,

- (d) In the event the Director of the Division of Alcoholic Beverage Control makes a final decision which does not affirm this Initial Decision, the Respondent shall be allowed to withdraw its non-vult pleas and to proceed to a hearing in the matter.

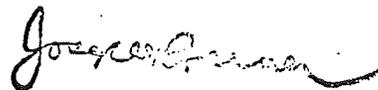
Pursuant to the stipulations reached, Respondent (through its attorneys and its Corporate President, William Hunter) entered non-vult pleas to the charges and Deputy Attorney General Mysak represented on behalf of the Division that he had full authorization to "bind" the Division to the imposition of a fifty (50) day suspension of Respondent's license, having previously obtained the express approval and consent of the Division's Director, Joseph H. Lerner, to this arrangement. Respondent (through its attorneys and its Corporate President, William Hunter) then agreed to accept the imposition of the proposed penalty.

Accordingly, on the basis of the foregoing, I DECIDE AND ORDER that Respondent's license be suspended for a fifty (50) day period of time beginning on or about March 1, 1980 for its violations of N.J.A.C. 13:2-23.7 and N.J.A.C. 13:2-23.14.

This recommended decision may be affirmed, modified or rejected by the head of agency, the Director of the Division of Alcoholic Beverages, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

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Joseph H. Lerner
Director