

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
TRENTON, NJ 08625

BULLETIN 2431

JUNE 30, 1983

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Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
RICHARD J. HUGHES JUSTICE COMPLEX  
RICHARD J. HUGHES JUSTICE COMPLEX, CN-087  
TRENTON, NJ 08625

BULLETIN 2431

JUNE 30, 1983

1. OPINION LETTER: CONCERNING REQUIREMENT THAT CLUB MEMBERSHIP CONSIST OF AT LEAST 60 MEMBERS AT TIME OF LICENSE RENEWAL. WAIVER GRANTED UNDER N.J.A.C. 13:2-8.7(a) FOR SPECIAL CAUSE SHOWN.

June 9, 1983

Mr. John Schmidt, Secretary  
Fraternal Order of Eagles  
181 West Main Street  
Rahway, New Jersey 07065

RE: Fraternal Order of Eagles  
Club License No. 2013-31-042-001  
Rahway, New Jersey

Dear Mr. Schmidt:

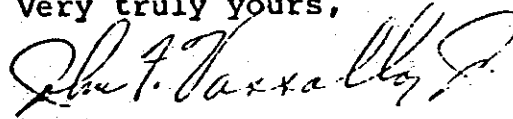
Receipt is acknowledged of your letter dated May 24, 1983 wherein you request a waiver under N.J.A.C. 13:2-8.7(a) which states in part that... "No club license shall be renewed unless the club consists of at least 60 members at the time of renewal..." (underscoring added).

In your letter you do not indicate the number of bona-fide members currently in the above club. My assistant was unable to contact you by phone at your club, but the Municipal Clerk of Rahway informed us that you currently have 45 members and further learned that your organization is a chapter of a national organization and conducts numerous charitable functions.

In view of the commendable activities which your organization has performed, I shall grant the waiver of N.J.A.C. 13:2-8.7(a) to permit you to timely file your renewal application for the 1983-1984 licensing period.

Finally, you must let us have your prompt assurance by return mail that your organization will conduct a membership drive to increase your membership to at least 60 members prior to the 1984-85 license renewal period. If your membership remains below the required 60 members at the 1984-85 licensing year, a second waiver may not be appropriate.

Very truly yours,



JOHN F. VASSALLO, JR.  
DIRECTOR

2. OPINION LETTER: DIRECTOR'S PRELIMINARY APPROVAL OF ATLANTIC CITY LICENSE TRANSFER APPLICATIONS PURSUANT TO N.J.A.C. 13:2-3.10--PUBLIC BARROOM AREAS FOUND ADEQUATE (N.J.S.A. 33:1-12.23).

June 13, 1983

Municipal Board of Alcoholic Beverage  
Control

C/O Adelaide Dean, City Clerk  
City Hall  
1301 Bacharach Boulevard  
Atlantic City, New Jersey 08401

RE: Atlantic City License Transfer Applications

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Dear Ms. Dean:

The investigation into the two (2) hereinafter designated person-to-person and place-to-place transfer applications have been completed, and pursuant to N.J.A.C. 13:2-3.10, I find that approval of same would not be contrary to the public interest. It should be noted that the investigative reports received from the Atlantic City Task Force indicate concern with respect to the physical delineation of the licensed premises and whether such facility would have an adequate public bar room to permit the sale of alcoholic beverages in original container for off-premises consumption. Based upon the report submitted to me, I concurred in such concern and so advised the proposed transferees. Thereafter, revised, detailed floor plans were submitted which are now enclosed in the appropriate files which satisfy the spirit and intent of N.J.S.A. 33:1-12.23. Subject to the specific limitations that any alcoholic beverage sale must occur in the designated public bar room area which shall be basically enclosed by fencing or railing (no perimeter counter sales of alcoholic beverages shall be permitted) the subject licensees shall be permitted to sell

draft beer and/or wine in disposable containers which contain a lid or other covering for off-premises consumption by a patron, in addition to on-premises consumption at the public bar room.

The Municipal Board of Alcoholic Beverage Control can act upon these applications and either grant or deny same in the reasonable exercise of its discretion.

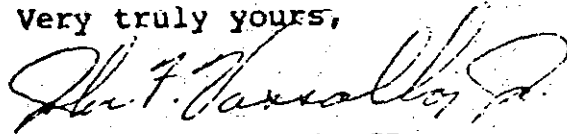
- (1) Plenary Retail Consumption License No. 0102-33-142-001  
Transfer From: Linville Inn, Inc.  
609 Atlantic Avenue  
Atlantic City, NJ

Transfer To: Spendeck Inc.  
T/A Pier Beef and Beer  
2100 Boardwalk, 2nd Level, H-1  
Atlantic City, NJ

(2) Plenary Retail Consumption License No. 0102-33-048-001  
Transfer From: Carson's Triangle, Inc.  
24-34 North New Hampshire Avenue  
Atlantic City, NJ

Transfer To: Ocean Steamer, Inc.  
T/A AW Shucks Oyster Bar and Beer  
2100 Boardwalk, 2nd Level, Space H-10  
Atlantic City, NJ

Very truly yours,



JOHN F. VASSALLO, JR.  
DIRECTOR

3. OPINION LETTER: TRANSFER OF A PLENARY RETAIL CONSUMPTION LICENSE ISSUED UNDER THE 50 SLEEPING ROOMS HOTEL/MOTEL EXCEPTION (N.J.S.A. 33:1-12.20).

June 13, 1983

Ms. Judith S. Howard  
Borough Clerk  
Borough of Beach Haven  
Bay & Engleside Avenues  
Beach Haven, NJ 08008

RE: Plenary Retail Consumption License No. 1503-33-002-003  
J & M Bay View Corp.

Dear Ms. Howard:

Receipt is acknowledged of your letter dated April 26, 1983 wherein you request an advisory opinion concerning the application of N.J.S.A. 33:1-12.20 as it relates to a proposed person-to-person and place-to-place transfer application currently pending in your community. You indicate that the above-referred license was issued to the Bayview Manor Hotel in 1955 as an exception to the general Population Quota Law set forth in N.J.S.A. 33:1-12.14. You further advise that the above-referenced license is currently subject to considerations for a transfer to the only other facility which has more than fifty (50) rooms in the community and the Board of Commissioners are in favor of a transfer of license to this other motel.

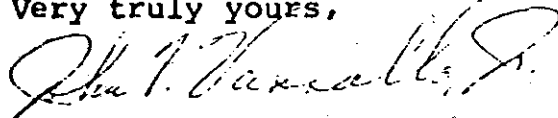
Two separate issues are involved in your request for advice. One concerns the ability to transfer a plenary retail consumption license which was issued under the hotel/motel exception of N.J.S.A. 33:1-12.20. Said license can be transferred person-to-person and place-to-place provided the license continues to retain the special condition that it must be utilized in

conjunction with the operation of a qualified facility. In this case, the proposed transferee and new location would qualify in the same regard as the existing licensee. N.J.S.A. 33:1-12.16 does recognize that these licenses can be renewed or transferred. See also Springdale Park, Inc. vs. Township Committee of Andover Tp., 97 N.J. Super. 270 (App. Div. 1967).

The second inquiry generated by your request concerns the fact that N.J.S.A. 33:1-12.20 was amended in 1968 and the number of sleeping rooms that must exist for a hotel or motel to qualify under the exception was raised from 50 to 100. While no specific prior Division ruling in this area could be ascertained, I am satisfied that the general philosophy of the Alcoholic Beverage Law recognizes that the status acquired by a licensee under an existing law continues to remain with that licensee even though there may be subsequent legislative activity in that area. For example, when the ability of a plenary retail consumption licensee to sell package goods was further restricted under N.J.S.A. 33:1-12.23, those licensees operating in a manner which would be inconsistent with the amendment were permitted to retain that use under the license. Similar legislative provisions which in effect protected existing licenses from the impact of amendments can be located in N.J.S.A. 33:1-12.14, et seq., N.J.S.A. 33:1-12.31 et seq. and N.J.S.A. 33:1-43. Therefore, I am satisfied that the license acquired in 1955 at the time of the fifty (50) room hotel/motel exception can be transferred to another hotel/motel facility containing fifty (50) rooms or more.

It should be specifically reiterated and the license certificate should prominently display the fact that any utilization of this license is only permitted in a hotel/motel facility containing no less than fifty (50) sleeping rooms.

Very truly yours,



JOHN F. VASSALLO, JR.  
DIRECTOR

4. OPINION LETTER: ISSUANCE OF NEW PLENARY RETAIL CONSUMPTION LICENSE PURSUANT TO N.J.S.A. 33:1-12.14--REQUIREMENT TO COUNT ALL EXISTING LICENSES INCLUDING THOSE ISSUED UNDER THE HOTEL/MOTEL EXCEPTION PROVISIONS (N.J.S.A. 33:1-12.20).

June 13, 1983

Phillip Lewis Paley, Esq.  
Township Attorney for Township  
of Piscataway  
Kirsten, Friedman & Cherin  
17 Academy Street  
Newark, New Jersey 07102

RE: Township of Piscataway

Dear Mr. Paley:

Your letter of June 6, 1983 addressed to Executive Assistant Frattini has been referred to me for review and reply. I will reiterate and confirm that the reply addressed to you dated May 6, 1983 from Executive Assistant Frattini was accurate and reflects Division policy as it relates to the issues you have raised.

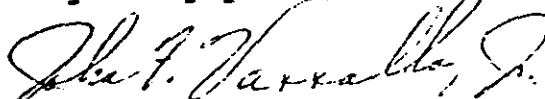
While a license in your community might have been issued in the past under the hotel/motel exception provisions of N.J.S.A. 33:1-12.20 at the time the license was then issued, whenever consideration is given to the ability to issue a new license in the future, the basic provisions of N.J.S.A. 33:1-12.14 must be applied.

Thus, at the present time the Township of Piscataway has issued thirteen (13) plenary retail consumption licenses. Your population according to the last federal census is 42,223. At a ratio of one license to each 3,000 in population, the Township may issue a total of fourteen (14) plenary retail consumption licenses. One additional license is now available for

issuance, not two.

All existing licenses must now be counted in determining the scope and effect of N.J.S.A. 33:1-12.14 and the fact that a license may have been issued as an exception under N.J.S.A. 33:1-12.20 several years ago does not mean that this license is no longer counted as a license for the purposes of the general statutory provisions under the Alcoholic Beverage Law.

Very truly yours,



JOHN F. VASSALLO, JR.  
DIRECTOR

5. OPINION LETTER: DENIAL OF REQUEST TO WAIVE DIVISION PRESCRIBED E-141-A FORM (EMPLOYEE LISTING REQUIREMENT) -- WAIVERS ISSUED ONLY TO LICENSEES HAVING SEVERAL THOUSAND EMPLOYEES.

May 5, 1983

Kelly T. Young, Esq.  
Barclay Pavilion  
Route 70  
Cherry Hill, NJ 08034

Dear Mr. Young:

Re: Enchante, Retail Plenary Consumption  
License #0409-33-007-001

I am writing in reply to your letter of March 31, 1983, requesting a waiver of the use of our employee lists for your client, K.T.Y., Inc., which trades under the name of "Enchante." I am sorry for the delay in answering your letter, but with our move from the northern office to Trenton, there has been a substantial amount of confusion in our mail deliveries.

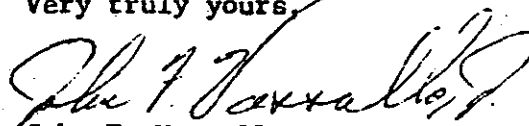
I regret to advise you that I am unable to grant your request of a waiver in this instance. Waivers of this requirement are granted by me, in only extremely exceptional cases, such as corporations having several thousand employees. You indicated that Enchante would have approximately 100 employees, substantially less than the noted exceptional employee case.

Please also be advised that our forms have room for approximately 40 or more employees per sheet, as opposed to the 15 employees as is your indicated understanding. In your case, however, you may wish to consider alphabetically listing employees on these forms, with perhaps employees whose last names begin with A to C on one form, D through G on another, etc.

I believe it is important that the E-141-A form be utilized in every possible case. This form contains provisions for the recording of all required employee information in a regular, useful format. Our agents are very familiar with this form, and find it extremely useful in their work. It also facilitates any need we may have to quickly duplicate this information for our review.

In accordance with the above noted reasons, I must deny your request for a waiver.

Very truly yours,

  
John F. Vassallo, Jr.

6. NOTICE TO WHOLESALERS AND DISTRIBUTORS CONCERNING SUBMISSION AND CONTENTS OF ANNUAL REPORT ON CREDIT COMPLIANCE FOR 1982 PURSUANT TO N.J.A.C. 13:2-24.4(e)(iii)--REPORT MUST BE FILED BY JULY 30, 1983.

Pursuant to N.J.A.C. 13:2-24.4(e)(iii) every wholesaler must submit to the Division annually a report outlining its actions to insure compliance with Division credit regulations. The report for calendar year 1982, certified by an appropriate agent or officer of the wholesaler, must be filed by July 30, 1983.

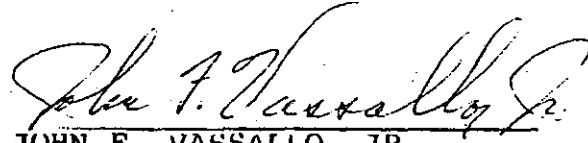
The report shall include the following:

1. An identification of the wholesaler and the job classification of the individual(s) submitting the report;
2. A statement of the following credit practices and terms:
  - (a) The wholesaler's normal credit period to the entire retail trade;
  - (b) An enumeration of general standards utilized to justify different credit terms to particular accounts, if applicable;
  - (c) An indication whether you have allowed prompt payment discounts on price in credit purchases, and, if so, a delineation of the discount terms; and
  - (d) The percentage charged by the wholesaler on delinquent accounts and the method of computing interest.
3. A statement of how the wholesaler defines "satisfaction" in its terms of sale for the purposes of a timely payment of a credit obligation and for the purposes of payment on an account subject to a Notice of Delinquency, i.e., in default;
4. Set forth the telephone number and address of the individual and/or bureau charged with maintaining credit records for the two year period required under N.J.A.C. 13:2-24.4(e)(i);
5. Provide the following statistical data concerning your wholesale operation and credit transactions as of December 31, 1982:
  - (a) Dollar amount of gross sales to retailers during the reporting year;
  - (b) Dollar amount of outstanding indebtedness due from retailers, whether in default or not, as of December 31, 1982; and
  - (c) Dollar amount of defaulted indebtedness, as of December 31, 1982 for transactions:
    - (i) up to 6 months old
    - (ii) 6 months to 1 year old
    - (iii) over 1 year old;
6. Provide the specific names and dollar amounts concerning collection activity for defaulted obligations:
  - (a) For retailers currently subject to civil litigation or subject to entry of a judgment in 1982 by wholesaler to collect indebtedness; and



(b) For retailers whose debts were discharged by operation of law (e.g., Bankruptcy, receivership, etc.) in 1982 or who are currently subject to such proceedings.

7. Provide any additional information you deem relevant to your compliance with the annual report requirement and submit any comments or suggestion to amend, modify or supplement the herein stated report standards or the subject regulations.

  
JOHN F. VASSALLO, JR.  
DIRECTOR

DATED: June 14, 1983

NOTE: Public inspection of information requested in this report and investigative exclusions therefrom shall be governed by the provisions of N.J.A.C. 13:2-29.1, et seq., following review by the Division.

Dollar figures for specific wholesalers and distributors will be considered confidential. Summaries or examples of such figures may be utilized in reports without identification of specific parties.

Transmittal of reports and all inquiries should be directed to Christopher T. Lawless, Jr., Executive Assistant to Deputy Director Robert J. Pinard, at the Division Offices.

7. NOTICE TO CLUB LICENSEES--REMINDER OF PRIVILEGES AND LIMITATIONS--  
POLICY NOT TO ACCEPT MONETARY OFFERS IN COMPROMISE IN LIEU OF  
SUSPENSIONS.

June 14, 1983

Dear Club Licensee:

It has come to our attention that many club licensees throughout the State are or may be engaged in practices which are not permitted by the license privilege which they hold. The purpose of this letter is to review some of those privileges permitted and not permitted under your license, to discuss certain policies of the Division regarding club licenses, and to assure you of our availability to work with you and to answer inquiries in order to enable you to operate within the bounds of your license privilege.

#### The Club License

A Club License is issued pursuant to the authority set forth in N.J.S.A. 33:1-12(5). That statute provides that the holder of the Club License is entitled, subject to rules and regulations (which we will discuss later), to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. This means that all alcoholic beverages sold or served by a Club Licensee must be consumed on the licensed premises and none may be taken off the licensed premises or licensed portions of the premises. It also means that the only persons who may be served are actual and true members of the non-profit licensed organization and actual and personal guests of such members. No one else may be served.

#### Rules and Regulations

In furtherance of the statutory mandate discussed above, the Division has promulgated rules and regulations pertaining to Club Licenses. The specific regulations governing Club Licensees are found in Subchapter 8 of Chapter 2, Title 13, of the New Jersey Administrative Code. A reprint of the provisions of that subchapter (cited as N.J.A.C. 13:2-8.1 to 13:2-8.14) is attached to this letter for your continued reference. Please note, however, that there are also many other provisions of Chapter 2, Title 13 of the Administrative Code that also concern Club Licensees, especially regarding conduct off and on the licensed premises, but we are not discussing those rules in this letter in any detail, nor are copies of those rules and regulations being attached. We are only here concerned with the limitations of the Club License, as opposed to other types of licenses.

Please note carefully the definitions in N.J.A.C. 13:2-8.1. They are very specific and are to be very strictly followed. To be considered a valid club member, a person must be admitted to full voting membership in a manner prescribed by the bylaws of the club, maintained in good standing on a membership list with address included and admitted to membership no sooner than three (3) days after filing application. Thus, persons holding limited, auxiliary or social memberships, which do not include equal rights with regular members, shall not be deemed to be club members. The practice which has been observed where a person purportedly acquires a membership "at the door" or for "one-day," or for the apparent purpose of granting to that person the authority to purchase alcoholic beverages, does not confer a valid club membership.

With respect to the conduct of affairs and gatherings on the licensed premises which are sponsored by non-club members the following should be carefully understood and noted. In most situations where the club rents a portion of its licensed facility to a group for the conduct of a banquet or affair, the club cannot sell alcoholic beverages to that group. The group is not a club member, even if some persons in that group may be members of the club. In those situations, the club merely rents facilities, could sell food and non-alcoholic beverages to the group, and could require the hiring of club members as bartenders or waitresses to dispense alcoholic beverages and other items. The group itself must bring in the alcoholic beverages, which cannot be purchased from the club licensee. If that group is involved in selling alcoholic beverages to those who attend, either by means of its own cash bar or through a ticket price or subscription which includes alcoholic beverages, that group must acquire a social affairs permit under N.J.A.C. 13:2-5.1. The Club has a responsibility to insure that a social affairs permit is obtained in those situations because a failure to properly have the permit would result in a charge against the Club licensee for allowing unlawful alcoholic beverage activity on its licensed premises. Examples of these two situations can be shown as follows: The Rotary Club of a community utilizes a club licensed premises for its regular monthly meetings. At those meetings the only persons in attendance for the Rotary are the Rotary members and specially invited guests. The club can rent the facilities and sell food to the Rotary for the luncheon. If the Rotary desires alcoholic beverages they must bring in their own to be served and consumed by the attendees at the monthly meeting. The Rotary rents the facilities for the purposes of having a function at which members of the general public are invited to attend at a specified ticket price which includes the availability of alcoholic beverages. Then the Rotary would also have to acquire a social affairs permit, and not acquire its alcoholic beverages from the Club licensee.

In defining who is a guest of a club member, the regulations clearly require that the "guest" be someone expressly invited to and sponsored by a club member. One club member can have as his guests no more than nine (9) individuals. This does not mean that the club can allocate the first nine (9) non-members who walk in the club premises to a particular member and the next nine (9) to a second member. The only waiver of the nine (9) guests limit occurs when a member utilizes a portion of the licensed premises for a private party he is sponsoring for a spouse, child, parent, or brother or sister. These most often represent functions such as weddings, anniversaries, confirmations, bar mitzvahs, or birthday parties.

The fact that I have specifically mentioned certain provisions of Subchapter 8, and not others, does not mean that the other provisions are less important. All are equally important and pertinent and are to be strictly followed.

Other Rules

As mentioned above, there are also other rules and regulations besides Subchapter 8 which govern Club Licensees. A Club Licensee, like any other licensee, may not serve actually or apparently intoxicated persons or under-aged persons (no one born after 1/1/64 may be served until 1/1/85, and after that no one under 21 may be served directly or indirectly); no beverages may be sold under cost; you may purchase your alcoholic beverages only from licensed wholesalers; no "2-for-1" specials may be offered; gambling devices and video card games are not permitted on your licensed premises; and you may not allow members to purchase quantities of alcoholic beverages through you, such as at Christmas time, unless it is all to be consumed on your licensed premises at a member's private party (wedding, etc.).

Violations

Please note the provisions of N.J.A.C. 13:2-8.14. But please also note that since Club Licenses are only issued to non-profit organizations, it is the policy of the undersigned that all penalties will be either suspension or revocation of license. No offer in compromise will be accepted in lieu of suspension of a Club License.

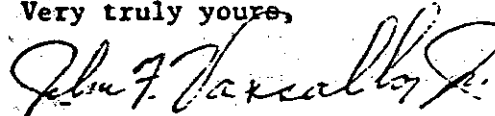
In summary, because the scope of a Club License is very limited, the holder of such license must take extra steps to stay within the limitations discussed above and otherwise contained in rules and regulations. The Division intends to strictly enforce those rules and regulations.

It is our hope, however, that as a Club Licensee you will be extremely careful to abide by the rules so that disciplinary action will not be necessary. We suggest that the officers, directors, trustees and anyone else responsible for operating the alcoholic beverage service for your Club read and become familiar with the content of this letter (which is by no means all-inclusive) and the rules and regulations of this Division.

If anyone has any specific questions regarding anything in this letter or in the regulations, or in any way pertaining to your license and its privileges, please feel free to contact the Division, preferably by letter. We will be glad to assist you.

Thank you for your cooperation. With its continuance, the Club License privileges which you hold will continue as a source of enjoyment for your members.

Very truly yours,



JOHN F. VASSALLO, JR.  
Director

JFV:lg

## SUBCHAPTER 8. CLUB LICENSES

## 13:2-8.1 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

"Club" means an organization, corporation or association consisting of 60 or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

"Club member" means any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the bylaws of a club, and who maintains such membership in a bona fide manner and whose name and address are entered on the list of members. No individual shall be eligible for such club membership unless he has filed written application with the appropriate body, as set forth in the club bylaws, and such application is approved by said body at least three days subsequent to the filing thereof. Persons holding limited or auxiliary club membership shall not be deemed to be club members.

"Guest of club member" an individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guest no more than nine individuals on any one occasion unless such individuals are attending a private affair, such as a wedding, anniversary, confirmation, bar mitzvah or birthday party, honoring a spouse, child, parent, brother or sister of a club member.

## 13:2-8.2 Bona fide clubs

Club licenses shall be issued only to bona fide clubs.

## 13:2-8.3 Previous period of continuous, active operation

Except as provided in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of its application for a license.

## 13:2-8.4 Previous period of possession and use of club quarters

Except as provided herein or in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license. A bona fide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reason of foreclosure, dispossession or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained.

## 13:2-8.5 Exceptions to eligibility requirements

(a) Any constituent unit, chapter or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which is in possession of suitable premises, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the director, and presents to the issuing authority at or before the issuance of the license, a certificate stating that satisfactory proof has been submitted to the director that said unit, chapter or member club has been duly creditably by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license.

(b) Nothing in N.J.A.C. 13:2-8.3 or 8.4 shall prevent the issuance of a club license to a bona fide club provided that special cause for such issuance is shown in writing to the director and provided that the director's written approval of such issuance is first obtained.

## 13:2-8.6 Qualifications of officers and members

(a) No club license shall be issued nor renewal granted to any corporation, association or organization in which an officer or member of the governing body has been convicted of a disqualifying offense pursuant to Title 33 unless the statutory disqualification resulting from such conviction has been removed by order of the director. Application for removal of the disqualification may be made by verified petition to the director when the unlawful situation is corrected.

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

1. The submitted application form is complete in all respects, including the requirements of N.J.A.C. 13:2-8.7; and

2. The officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33; and

3. The club maintains all records required pursuant to N.J.A.C. 13:2-8.8 and 8.12.

## 13:2-8.7 Submission of club member list and club charter

(a) A printed or typewritten list containing the names and addresses of all members of the club as of date of filing a club license application shall be submitted with the initial application as well as with each subsequent renewal application. No club license shall be renewed unless the club consists of at least 60 members at the time of renewal. The charter or articles of association of the club shall also be presented for inspection or certified copy of the same submitted with the initial application.

(b) Nothing in this section shall prevent the renewal of a license to a club not qualified by reason of a lack of requisite number of members, provided that special cause for such renewal is shown in writing to the director and further provided that the director's written approval of such renewal is first obtained.

## 13:2-8.8 Sales to club members

(a) No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage to any person not a bona fide member of the club or a bona fide guest of such member.

(b) All club licensees shall have and keep on the licensed premises a true record, in the form prescribed by the director (set forth below), of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by non-club members and such record shall be available for inspection by the director and other issuing authority and by his or its deputies, inspectors, investigators and agents and by other officers as defined by N.J.S.A. 33:1-1(p) for a period of three years from the date of such affair.

(c) No club licensee shall allow, permit or suffer any such affair to be held at the club licensed premises at which any non-club member makes any direct or indirect payment (such as by admission fee, donations, contribution or otherwise) for any alcoholic beverage or combination of food and alcoholic beverages unless a special permit is first obtained from the director.

Date of Affair .....  
 Type of affair .....  
 Sponsored by .....  
 Was affair conducted under authority of a special permit? .....  
 Is so, give number of permit .....  
 Were alcoholic beverages supplied by the club licensee? .....

(Signature of authorized officer)

## 13:2-8.9 Sales for on-premises consumption

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverages except for consumption on the licensed premises.

## 13:2-8.10 Hours of permissible sale and consumption

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage on the licensed premises during hours or on days when plenary or seasonal retail consumption licenses in the same municipality are prohibited from such activity by municipal regulation or referendum.

## 13:2-8.11 Social affairs permittees

No club licensee shall sell, serve or deliver any alcoholic beverage to the holder of any special permit authorizing sale of alcoholic beverages at a social affair to be conducted by the permittee, or to any person attending such social affair on the club licensed premises unless such person is, in fact, a bona fide member of the licensee-club or a bona fide guest of such member.

## 13:2-8.12 Books of account

All club licensees shall have and keep for a five year period a true book or books of accounts wherein there shall be entered a record of all moneys received and a record of the source of all moneys received other than in the ordinary course of business and a record of all moneys expended from such receipts and the name of the person receiving such moneys and the purpose for which such expenditures were made. All books and records pertaining to such receipts or expenditure shall be made available for inspection by the Director of the Division of Alcoholic Beverage Control and the other issuing authority, by his or its deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).

## 13:2-8.13 Advertising prohibition

No club licensee shall advertise, directly or indirectly, or allow, permit or suffer any advertising to non-club members the availability of alcoholic beverages at its licensed premises other than by signs on the interior of the licensed premises as visible from the exterior thereof, provided, however, that the prohibition herein shall not apply to the holder of any special permit issued by the director and authorizing the sale of alcoholic beverages at a social affair to be conducted at the club's licensed premises, with respect to such particular affair providing the social affair permit number is indicated on the advertisement.

## 13:2-8.14 Violations

A club license is a restricted type of retail license and therefore its holder must comply with not only the rules set forth in this regulation, but with all the relevant provisions applicable to retail licenses. In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the club licensee, to show the violation was committed by an agent, servant or employee of the club licensee or a member of the club. The fact that the licensee did not participate in the violation or that its agent, servant, employee or member acted contrary to instructions given to him by the club licensee or that the violation did not occur in the presence of the licensee's agent, servant, employee or member shall constitute no defense to the charges preferred in such disciplinary proceedings.

8. NOTICE TO HOLDERS OF SPECIAL PERMITS PERMITTING SALES OF ALCOHOLIC BEVERAGES AT A CARNIVAL--PRECAUTION TO BE TAKEN TO PREVENT DRINKING BY UNDERAGE PERSONS.

TO: HOLDERS OF A SPECIAL PERMIT PERMITTING ALCOHOLIC BEVERAGES AT A CARNIVAL

SUBJECT: SERVING ALCOHOLIC BEVERAGES TO UNDERAGE PERSONS

Carnivals throughout the state have become an easy place for underage persons to obtain alcoholic beverages and it is, therefore, necessary that precautions are taken to prevent any alcoholic beverages being sold or served to them, directly or indirectly.

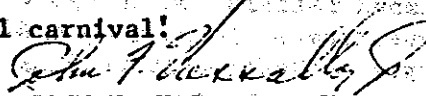
As the holder of a permit permitting alcoholic beverages to be served at your carnival, you are responsible for ensuring that underage persons are not served alcoholic beverages. The present age for the legal purchase and consumption of alcoholic beverages in New Jersey is 21, except that persons who were 19 or older as of December 31, 1982, may continue to purchase and consume such beverages. A simpler rule is that until January 1, 1985, anyone who was born in 1963 or before may purchase alcoholic beverages. After January 1, 1985, the rule will be that only persons 21 years of age or older may purchase such beverages.

If any persons under the legal drinking age are found being served or consuming alcoholic beverages on your premises, during the valid dates of the permit, such underage person and the person making the sale or serving the beverage, are subject to arrest and prosecution for violating N.J.S.A. 33:1-81. Moreover, at such point the permit will immediately be cancelled and thereafter no alcoholic beverages will be able to be sold. And finally, if there is a violation of this nature, it is my policy that no permits for social affairs at which there is a sale of alcoholic beverages will be issued for those premises for a period of at least a year.

We suggest that the persons operating your alcoholic beverage activity be made well aware of the rules pertaining to underage persons and that they take extra precautions to prevent such sales and service to underage people. One way that has been successful at carnivals is for an area to be cordoned off with people stationed at the entrance in order to check identifications. Further, no one who is under the legal drinking age would be permitted into the area in which the alcoholic beverage (beer or wine) is being served or in which it may be consumed. Lastly, you would not permit anyone to take the alcoholic beverage away from the designated area, but would rather require the consumption in that area.

If at any time there are any questions regarding the operation of your premises and what can or cannot be done, you should not hesitate to call this Division at 609-984-2830 to discuss the specific question or problem.

Best wishes for a very successful carnival!



JOHN F. VASSALLO, JR.  
DIRECTOR

- 9. DISCIPLINARY PROCEEDINGS (CITY OF TRENTON)--ILLEGAL "FRONT" OPERATION, FAILURE TO KEEP TRUE BOOKS OF ACCOUNT AND HINDERING THE INVESTIGATION--LICENSE SUSPENDED FOR BALANCE OF ITS TERM AND STATE OF NEW JERSEY ANY RENEWALS UNTIL UNLAWFUL SITUATION CORRECTED--90 DAYS MINIMUM SUSPENSION

Department of Law and Public Safety  
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL

In the Matter of Disciplinary Proceedings against )  
 )  
 M.A.T. Wine & Liquor Company, Inc., )  
 t/a Mercer Wine & Liquor )  
 161 North Broad Street )  
 Trenton, NJ )  
 Holder of Plenary Retail Distribution License No. 1111-44-145-001 issued by the City Council of the City of Trenton )  
 )

CONCLUSIONS AND ORDER  
 S-13,225  
 H-7380-237  
 OAL DKT. NO. ABC 1603-82

Charles Allen, Esq., Attorney for Licensee  
 Lauren J. Fleischer, Esq., Deputy Attorney General,  
 Representing the Division

INITIAL DECISION BELOW

R. Jackson Dwyer, Administrative Law Judge

Dated: March 1, 1983

Received: March 1, 1983

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed both on behalf of the Licensee and the Division, pursuant to N.J.A.C. 13:2-19.6. Initially, I note that my decision does not consider any matters which were not properly introduced and supported by competent evidence at the Initial Hearing.

The licensee was charged with failing to disclose a material fact and permitting an undisclosed individual to exercise the privileges of the license, in violation of N.J.S.A. 33:1-25 and 1-26; aiding and abetting in the violation of the act contrary to N.J.S.A. 33:1-52; failing to keep true books of account in connection with the operation and conduct of the licensed premises, in violation of N.J.A.C. 13:2-23.32; failing to produce on demand matters and things which the Director is authorized or empowered to investigate, inspect or examine, in violation of N.J.S.A. 33:1-35; and, directly or indirectly failing to facilitate, hindering, delaying or causing a hindrance or delay of an investigation of the licensed premises, in violation of N.J.A.C. 13:2-23.30.

In its Exceptions the licensee has reiterated the arguments which it stated before the Judge. I find that the Judge has properly analyzed and evaluated the licensee's arguments with respect to the evidence and has properly disposed of same. Therefore, it is not necessary for me to restate either those facts, conclusions, or reasoning.

The question which remains, and which both the licensee and the Division noted in their Exceptions, is with respect to the appropriateness of the recommended penalty of the suspension of the license for the balance of the 1982-1983 licensing term. The Division takes the posture that the final order should include not only the suspension, but a requirement that the licensee take action to correct any ongoing violations. The licensee, on the other hand, argues that the penalty of suspension for the balance of the term is too severe and that there are several mitigating factors which the licensee then sets forth.

There is no question that the penalty of suspension for the balance of the license term is warranted. Not only has the licensee been found guilty of an illegal "front" operation, but there are also the substantiated charges of not keeping true books of account, as well as hindering the investigation and not producing required matters as requested by the investigators.

Besides the suspension for the balance of the term, I note that the precedent penalty for the substantiated charges would be a suspension of at least 90 days. Although it is true that, as the licensee has pointed out, there are some mitigating factors to be considered (youth of the stockholder, the disclosure, though inadequate, of Mr. Sparano's interest in the business on page 7 of the application, the fact that the licensee acted upon the advice of counsel and such other matters), I also note there are aggravating factors. I note the fact that the Sparano's misstated to the investigators at their initial meeting by falsely stating that the corporate stock was placed in the wife's maiden name to protect her father's interest, when in fact her father had no financial interest in the license. This misstatement was further compounded by the preparation of false documents in an attempt to substantiate the proffered reasoning.

Finally, I note that from the record it appears the licensee has yet to produce several of the documents requested by the investigators, including the Sparano's personal income tax returns for 1977, 1978, and 1979, as well as providing sufficient documentation as to the source of funds which were used to purchase the license or to explain the substantial revenue increase for the months of August and September, 1980. Although Mr. Sparano states he cannot find his personal income tax returns, I note that upon request, the Internal Revenue Service can provide copies of any properly filed return. This, it appears, the licensee has not or will not do. Based on these circumstances, corrective action is required subject to service of a minimum 90-days license suspension.




Having carefully considered the entire record, I concur in the basic factual findings of the Administrative Law Judge, and adopt the same as my own. Those findings clearly support a conclusion of guilt on all charges, which I so affirm. I am not, however, in total agreement with the recommended penalty proposed by the Administrative Law Judge, for the reasons set forth above. Therefore, I have modified the penalty to provide for a minimum 90 days' license suspension with provision for a partial monetary compromise as noted below.

Accordingly, it is on this 13th day of April, 1983,

ORDERED that the Plenary Retail Distribution License No. 1111-44-145-001 issued by the City Council of the City of Trenton to M.A.T. Wine & Liquor Company, t/a Mercer Wine & Liquor, for premises at 161 North Broad Street, Trenton, be and the same is hereby suspended for the balance of the term, viz., midnight, June 30, 1983, effective 10 P.M. Wednesday, April 27, 1983 and for any renewal of said license which may be granted; with leave granted to the licensee or any bona fide transferee of the license, to apply to the Director by Verified Petition for lifting of the suspension upon proof that the unlawful situation has been corrected, but in no event shall said suspension be lifted sooner than 90 days from the commencement of the suspension set forth herein; and it is further

ORDERED, that should the licensee establish by Verified Petition and other proofs that the unlawful situation has been corrected, consideration will be given to an application to make a monetary offer in compromise in lieu of the final forty-five (45) days of the aforesaid suspension, in accordance with N.J.S.A. 33:1-31.

  
JOHN F. VASSALLO, JR.  
DIRECTOR

JFV:lg

APPENDIX: INITIAL DECISION BELOW



**State of New Jersey**

**OFFICE OF ADMINISTRATIVE LAW**

**INITIAL DECISION**

**OAL DKT. NO. ABC 1603-82**

**AGENCY DKT. NO. S-13,225 #7380-237**

**IN THE MATTER OF THE DISCIPLINARY  
PROCEEDING AGAINST:**

**M.A.T. Wine & Liquor Company,  
t/a Mercer Wine & Liquor  
161 North Broad Street  
Trenton, New Jersey**

**Holder of Plenary Retail Distribution  
License No. III-44-145-001 Issued by  
the City Council of the City of Trenton**

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**APPEARANCES:**

**Lauren J. Fleischer, Deputy Attorney General, for the State Division of  
Alcoholic Beverage Control  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)**

**Charles Allen, Esq., for the licensee  
(Dietrich, Allen and St. John, attorneys)**

**Record Closed: January 15, 1982**

**Decided March 1, 1983**

OAL DKT. NO. ABC 1603-82

BEFORE R. JACKSON DWYER, ALJ:

In this disciplinary proceeding the Director of the Division of Alcoholic Beverage Control seeks to suspend or revoke plenary retail distribution license no. III-44-145-001 held by M.A.T. Wine & Liquor Company, t/a Mercer Wine & Liquor, 161 North Broad Street, Trenton, New Jersey, based upon the charges heard against the licensee on September 4, 1981:

1. In your license application, filed in June, 1980, you failed to show and disclose a certain material fact, viz., that Richard Sparano, had an interest, directly or indirectly, in the license applied for or in the business to be conducted under said license; such evasion and suppression of this material fact, being in violation of N.J.S.A. 33:1-25.
2. From in or about June, 1980 to date, you knowingly aided and abetted Richard Sparano, to exercise contrary to N.J.S.A. 33:1-26, the rights and privileges of its license; in violation of N.J.S.A. 33:1-52.
3. From in or about June, 1980, to date, you failed to have and keep a true book or books of account in connection with the operation and conduct of your licensed premises, viz., a record of all monies received other than in the ordinary course of business, and a record of all monies expended from such receipts and the names of the persons receiving such monies and the purpose for which such expenditures were made; in violation of N.J.A.C. 13:2-23.32.
4. From in or about October, 1980, to date, you, directly or indirectly, failed on demand, to produce, exhibit or surrender to the Director of the Division of Alcoholic Beverage Control, his deputies, inspectors or investigators, any and all matters and things which the Director is authorized or empowered to investigate, inspect or examine; in violation of N.J.S.A. 33:1-35.
5. From in or about October, 1980, to date, you directly or indirectly, failed to facilitate, hindered, delayed or caused the hindrance or delay, of an investigation or inspection of the licensed business or of the licensed premises or of any search thereof by the Director, his deputies, inspector or investigator; in violation of N.J.A.C. 13:2-23.30.

The licensee has pleaded not guilty to all the charges. The matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on November 18 and 19, 1982. The record closed on January 15, 1982.

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**I. UNDISCLOSED INTEREST and the AIDING  
and ABETTING CHARGES**

Donna M. Tuccillo (Sparano) is designated on the license as president, vice-president, secretary and treasurer of said corporation and holder of 100% of the corporate stock of M.A.T. Wine & Liquor Company, t/a Mercer Wine & Liquor. The Division contends that Richard Sparano, the husband of the licensee, has an undisclosed interest in the license and that the licensee, Donna Tuccillo Sparano, aided and abetted her husband in maintaining that undisclosed interest.

Sparano contends that he did disclose his interest on page 7 of the license application as follows: "husband of corporate president and director of licensee — will be employed." Upon advice of counsel, Sparano asserts that his name is not listed as a licensee primarily to protect the license from a judgment creditor.

**II. FINDINGS OF FACT**

I make the following findings of fact:

1. Richard Sparano took part in the decision to purchase the stock of the licensed corporation and at the time of the closing he signed an adjustment sheet with the statement, which reads in pertinent part: "accepted by purchaser, July 3, 1980, Richard Sparano."
2. Richard Sparano negotiated for the purchase of the license and told the ABC investigators about the details of the purchase. The licensee, Donna Tuccillo Sparano, did not know the details of the purchase price.
3. When the investigators visited the licensed premises, the licensee, Donna Tuccillo Sparano, referred the investigators to her husband, Richard Sparano, because she was not informed about the details of the business to answer their questions.

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4. The license was paid from for joint funds of the licensee, Donna Tuccillo Sparano, and her husband, Richard Sparano. Both Sparanos alleged that the license was purchased from wedding gifts and joint savings.
5. The licensee, Donna Tuccillo Sparano, admitted that she had little to do with the day-to-day operations and management of the licensed premises after it was acquired. Richard Sparano told her not to go to the licensed premises because it was in a "distressed neighborhood" and he preferred that she "never go down there."
6. When investigators visited M.A.T. Wine & Liquor Company on or about October 15, 1980 at 161 North Broad Street, Trenton, New Jersey, Donna Tuccillo Sparano was not present. Her husband, Richard Sparano, identified himself as the manager of the licensed premises and was obviously in charge of the licensed premises.
7. Richard Sparano's signature is the only authorized signature on the business bank account.
8. The license application is signed Donna M. Tuccillo, the maiden name of the licensee.

N.J.S.A. 33:1-25 provides that: "[f]raud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for suspension or revocation of the license." The Division of Alcoholic Beverage Control has denominated one who acts in name only as a "front" and the principle concern in this area of the alcoholic beverage laws is to determine when an undisclosed interest of the other person is of sufficient magnitude to result in a violation of the statute.

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A primary characteristic of a "front" is concealment and subterfuge. Sharp's Lodge, Inc., t/a Sharp's Lodge, Inc. v. Tp. Committee of the Tp. of Lakewood, A.B.C. Bulletin 1842, Item 1 (at 9). Thus, it has been said that, "[o]ur laws pertaining to undisclosed interest were formulated to prevent certain classes of individuals and organizations from exercising secret interests in the liquor industry." In the Matter of the Disciplinary Proceedings against Theresa Gallo t/a The Palace Lounge, A.B.C. Bulletin 2284, Item 1 (at 6). While there has been no precise articulation of a standard for determining the requisite interest in a "fronting" situation, both the Division and the courts have discussed the incidents of such an interest, and, it is assumed, that if a number of these incidents coalesce in a particular factual situation, a "front" exists. The most obvious example of a "front" exists when an otherwise disqualified person has an actual interest in the license premises, but undisclosed by the ostensible licensee. In the Matter of Disciplinary Proceedings against Jimmy McGriff's Golden Slipper of Newark, Inc. t/a Reflection, A.B.C. Bulletin 2109, Item 3 (25% ownership of outstanding stock.) Apart from such a readily discernible interest, the investment of funds by a disqualified or undisclosed party is a major consideration in determining whether a "front" exists. In the Matter of Disciplinary Proceedings against 482 Jackson Avenue Corporation, t/a 482 Jackson Avenue, A.B.C. Bulletin 2211, Item 3 (AT 10-11), aff'd, A.B.C. Bulletin 2248, Item 1 (N.J. Super. App. Div., January 25, 1977); Sharp's at 10. Thus, in a family situation, where a disqualified husband furnished the money necessary to purchase the premises where the licensee wife conducted a tavern, a "front" was found to exist. Florence Methodist Church, 38 N.J. Super at 85, (App. Div. 1955). Money from a joint savings account, containing funds exclusively contributed by the husband, was used to acquire a liquor business in the name of a wife in In the Matter of Disciplinary Proceedings against John Tully, Sr., A.B.C. Bulletin 2264, Item 1, and a "front" was also found to exist. Id. at 5. The Director, in that case, noted that, in relation to the funding of a licensed business, the pattern employed in purchasing a business, the source of the funds utilized and who exercised the control over the finances of the business are factors to be considered in determining whether a "front" exists. Id. at 10. As to jointly owned assets being used to fund an enterprise see also In the Matter of Disciplinary Proceedings against Milfax Corporation t/a Depot Lounge, A.B.C. Bulletin 2325, Item 3 (at 15). Even when there is a commingling of funds in such a manner that the sources of such funding cannot be

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ascertained, a "front" has been found to exist. Five Points at 10. All of these situations involved a spousal relationship, however, and, therefore, these decisions reflect consistent practices of the Division of Alcoholic Beverage Control to view situations where a license is acquired by a spouse, or other family member somewhat circumspectly. See also In the Matter of the Application of John R. Marini for an Unlimited Rehabilitation Employment Permit, A.B.C. Bulletin \_\_\_\_\_, Item \_\_\_\_ (at 1) (January 14, 1981).

Regardless of respondent's motivations for filling out the application as she did, "subterfuge" and "concealment" do exist. The undisputed facts clearly establish that the licensee's husband has de facto control of the business, and that he is something more than a mere "manager" of the business.

Accordingly, I FIND that the license application, filed in June 1980, failed to disclose that the licensee's husband, Richard Sparano, had an undisclosed interest, directly or indirectly, in the license applied for or in the business to be conducted under said license, in violation of N.J.S.A. 33:1-25.

I FIND that the licensee knowingly aided and abetted her husband, Richard Sparano, to exercise, contrary to N.J.S.A. 33:1-26, the rights and privileges of a license in violation of N.J.S.A. 33:1-52.

**DID THE LICENSEE FAIL TO MAINTAIN TRUE BOOKS OF ACCOUNT**

N.J.A.C. 13:2-23.32 provides that:

All licensees shall have and keep a true book or books of account in the english language wherein there shall be entered a record of all moneys invested in the licensed business and the source of all such investments, for an unlimited period of time, all moneys received and a record of the source of all moneys received other than in the ordinary course of business, for a five year period and all moneys expended from such receipts and the name of the person receiving such moneys and the purpose for which such expenditures were made, for a five year period. All such books and records pertaining to such investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director of the Division of Alcoholic Beverage Control and the other issuing authority and by his or its deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1."

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The Division contends that the licensee not only failed to keep true books of account of all money invested in the licensed premises but also failed to adequately document the source of moneys used to pay for this investment.

The licensee contends that her accountant did not perform as requested and that ultimately a new accountant had to be hired to maintain her true books of account. Many documents were seized by the investigators making a reconstruction of the licensee's true books difficult. The source of the investments for the license came from savings and from the Sparanos' cash wedding gifts received one year prior to the purchase of the license.

I disbelieve the licensee's explanation for the source of the investment in the licensed business for the following reasons:

1. Richard Sparano testified, on direct examination, that approximately \$10,000 in cash was received in wedding gifts. During cross-examination, Inspector S testified that the Sparanos told the investigator that all of the money was kept at their home in a dresser drawer despite the fact that they maintained a bank account. At the hearing, on direct examination, Mr. Sparano testified that he kept some of the money in his savings account, some of it in his home, and some of it in a safe deposit box. Mr. Sparano further testified that some \$5,000 that was not in his bank account was used as start-up money for his wife's clothing business. The logical inference is that if the money was used for his wife's clothing business, it could not also have been used to purchase the store.
2. The Sparanos also testified that they earned less than average income prior to the purchase of the liquor store. No federal income tax return was produced for that year, although the Division had requested it. The logical inference is that they utilized their cash wedding gifts for living expenses and did not use them as a source of investment.



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3. There was a commingling of corporate funds with other moneys from outside sources and without unrelated purposes. Checks made out to Dennis Sparano Construction Company were deposited in the corporate business account. There was also a \$7,500 bank loan used for Donna Marie Designs deposited into the corporate account and then immediately withdrawn from that account. Noted on the application for the loan, Richard and Donna Sparano are listed as principals of the licensed corporation. Richard Sparano's signature appears as the applicant's signature, and the stated purpose of the loan is "working capital" presumably for the corporation.
4. The Sparanos deliberately prepared affidavits and promissory notes to falsify certain facts about the source of the funds for their investment establishing that the licensee's father, John Tuccillo, lent his daughter the money to purchase the business.

Accordingly, I FIND that the licensee failed to maintain true books of account of all moneys invested in the licensed business and the source of all such investments in violation of N.J.A.C. 13:2-23.32.

**III. DID THE LICENSEE HINDER THE INVESTIGATION AND/OR  
FAIL TO PRODUCE REQUIRED DOCUMENTS ON DEMAND  
THAT THE DIRECTOR IS AUTHORIZED OR EMPOWERED  
TO INVESTIGATE, INSPECT OR EXAMINE**

The Division contends that the licensee hindered the investigation and further failed to produce required documents. The Sparanos contend that the charge of hindering is applicable only to situations where law enforcement officers are actually barred from entering a licensee's premises. Furthermore, respondent contends he did all that one could reasonably expect in producing the required documents requested by the investigators or that he requested periods of extension to produce the documents requested.

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**I FIND that:**

1. The Sparanos clearly hindered the investigation by deliberately preparing false affidavits and promissory notes to document the source of the funds to purchase the licensed business as coming from John Tuccillo, the licensee's father.
2. The inspectors asked the licensee for a purchase agreement, bill of sale, closing statement, mortgages, records of outstanding loans, cancelled checks used in the purchase of the premises, income and disbursement records including daily record book, payroll and salary records, including 941 forms, business checkbook, cancelled checks and stubs, monthly payment statements, business ledger book, lease for the premises, corporate record books, including licensee's stock certificates and transfer book and tax returns. Certain of these documents were not produced on demand, or at all, or were incomplete despite the inspectors repeated request for them.
3. When the inspectors first visited the licensed premises, they requested the current license, the licensee's application, the employee list and the R.L.D. certificate. The only document produced was the current license.
4. The licensee was unable to produce the daily income and disbursement records for the business. The prior owners' average gross income for the store was \$2,700 per week; however, deposits in the corporate accounts sometimes far exceeded that gross income.
5. The inspectors had difficulty in obtaining requested information about a loan made by Archie Sparano towards the purchase of the license. An unsigned affidavit reflects that Archie Sparano lent Richard and Donna

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Sparano \$2,800 to be used toward the purchase of the license, which was confirmed by Donna Sparano. However, Archie Sparano told the inspectors that he made a \$3,500 loan to the Sparanos, which was repaid out of the proceeds of a \$7,500 loan, obtained later from Capital State Bank.

Accordingly, I FIND that the licensee both hindered the investigation and failed to produce the required documents upon demand to investigators in violation of N.J.S.A. 33:1-35 and N.J.A.C. 13:2-23.30.

**PENALTY**

Having found the licensee guilty of each of the five charges preferred by the Division of Alcoholic Beverage Control, it is ORDERED that plenary retail distribution license No. III-44-145-001 issued by the City Council of the City of Trenton to M.A.T. Wine and Liquor, t/a Mercer Wine and Liquor, 161 North Board Street, Trenton, New Jersey, be and the same is hereby SUSPENDED for the balance of the 1982-1983 licensing term.

This recommended decision may be affirmed, modified or rejected by the John F. Vassallo, the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the Director 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.

PUBLICATION OF BULLETIN 2431 IS HEREBY DIRECTED

THIS 30th DAY OF JUNE, 1983.

A handwritten signature in cursive script, reading "John F. Vassallo, Jr.", written over a horizontal line.

JOHN F. VASSALLO, JR.  
DIRECTOR

