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Administrative Law—Liquor Licenses

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and the conflicting testimony had been before the Board, and its decision recited that it had been reached after careful consideration of the entire record, the courts could not and should not interfere.²⁸ The administrative action has a quality resembling that of a judicial proceeding and it is not the function of the court to probe the mental processes of the deciding officer in reaching his conclusion.²⁹ The minority, however, entirely ignored the misconception of the Board's duties which was entertained by some of its members, and its position thus seems less realistic than that of the majority.

Liquor Licenses

In an action under Article 78 of New York Civil Practice Act to review refusal to renew a restaurant liquor license by the State Liquor Authority on the ground of permitting licensed premises to become disorderly, the Court *held*,³⁰ the evidence did not sustain the determination; there was an absence of substantial evidence that the licensee or his manager knew or should have known of the presence of prostitutes, or heard a conversation in which a police officer was solicited.

The majority decided that sufferance or permission, within the purview of the statute, requires a fair measure of continuity and permanence, which the Liquor Authority here failed to prove. Since an administrative board's action must be *clearly* arbitrary in order to reverse a finding of fact,³¹ the Court must have determined that the finding was arbitrary, although neither the majority nor the dissenting opinion discussed the reviewability of the Authority's action. The court retains its power to review where an arbitrary decision has been made, in spite of the fact that review in this case is not specifically provided for in the statute.³² The Court here assumed review was possible, and then reversed what was not a clearly arbitrary and capricious finding of fact. They found that there was not substantial evidence of the owner's knowledge and sufferance—clearly a question of fact, on which reasonable men could differ, as did the majority and dissenters.

Plaintiff's request for liquor license, made on November 21, 1952, was held in abeyance while the state legislature made a survey of the number of liquor stores in each country and drew up a schedule of the maximum number to be

28. *Weekes v. O'Connell*, *supra*, note 26.

29. *Morgan v. United States*, 304 U. S. 1 (1938).

30. *Migliaccio v. O'Connell*, 307 N. Y. 566, 122 N. E. 2d 914 (1954).

31. *In re Leonard Battaglia v. John F. O'Connell*, 269 App. Div. 1002, 58 N. Y. S. 2d 412 (3rd Dep't 1945).

32. The statute provides for review of the Authority's actions only where there is a refusal to issue a license, or where there is a revocation or cancellation or suspension of a license. N. Y. ALCOHOLIC BEVERAGE CONTROL LAW §121.

permitted. On July 20, 1953, the Authority notified plaintiff that his request was denied. On September 9, 1953, the Authority authorized a transfer from a town within the same county to the town in which plaintiff desired his liquor store to be located. Plaintiff petitioned for an order directing the Authority to grant his request. The Court of Appeals, in a 4-3 decision, affirmed an order dismissing the petition.³³ The State Liquor Authority has power to limit the number of licenses to be issued within the state or any political subdivision thereof, and in connection therewith to prohibit the acceptance of application for such classes of licenses as have been so limited.³⁴

Rule 17 of Rules of the Authority³⁵ states: "it is determined that public convenience and advantage are now adequately served by the number of premises licensed." The Schedule³⁶ drawn up by the Authority was in terms of counties. §30 of the Alcoholic Beverage Control law provides for a "local" board in every county. It would be too cumbersome to work out the Schedule for subdivisions smaller than counties. For these reasons, the Court felt that the Authority did not overstep its jurisdiction in refusing plaintiff's request. So long as the Authority determined that it was not for the public convenience to have an additional liquor store in that county, it could allow a transfer *within* that county of existing liquor stores.

Revocation of Driver's License on Foreign Conviction

The possession of a driver's license is a vested property right of which the holder may not be deprived except with due process.³⁷ So far has the New York Legislature gone in protecting a license that it requires a magistrate before whom a traffic offender is brought to warn the defendant that upon a plea of guilty his license may be revoked.³⁸ New York statute, however, makes mandatory the revocation of a driver's license after the licensee has been convicted, even outside of the state, of operating a motor vehicle while under the influence of intoxicating liquor.³⁹ As a plea of guilty before a foreign court is not governed by Section 335-a of the Code of Criminal Procedure, and especially where there is no proof in the record that a defendant was represented by counsel, the courts, as evidenced by *Moore v. MacDuff*,⁴⁰ will examine a foreign conviction minutely before permitting it to be used as grounds for revocation of a license under the Vehicle and Traffic Law.⁴¹

33. *Brenner v. O'Connell*, 308 N. Y. 636, 127 N. E. 2d 715 (1955).

34. N. Y. ALCOHOLIC BEVERAGE CONTROL LAW §17(2).

35. APPENDIX, N. Y. ALCOHOLIC BEVERAGE CONTROL LAW.

36. Schedule is contained in Rule 17, note 35 *supra*.

37. *Wignall v. Fletcher*, 303 N. Y. 435, 103 N. E. 2d 728 (1952).

38. N. Y. CODE CRIM. PROC. §335-a.

39. N. Y. VEHICLE & TRAFFIC LAW §71, subd. 2(b).

40. 309 N. Y. 35, 127 N. E. 2d 741 (1955).

41. See note 39, *supra*.