

**LO-RAN, INC.,**  
Appellant,  
v.  
**BOROUGH OF BOUND BROOK,**  
Respondent.

Decided September 15, 1981

**Initial Decision**

**SYNOPSIS**

Lo-Ran, Inc. claims that the Borough of Bound Brook should not have denied its application for an alcoholic beverage license transfer without affording it a hearing. Bound Brook contends that a hearing was not required because the location for the proposed transfer violates a valid municipal ordinance controlling the distance between licensed alcoholic beverage establishments.

The administrative law judge found that in August of 1979, the Borough of Bound Brook repealed a 1949 ordinance which had been designed to keep licensed premises at least 700 feet apart. After local election results in November, however, steps were immediately taken to reestablish the 1949 ordinance and on January 15, 1980, the newly elected Borough Council introduced and passed an ordinance reinstating the 700-foot distance requirement.

On January 31, 1980, the same day on which the Notice of Application of the new distance ordinance first appeared in a local newspaper, the appellant filed an application for a person-to-person and place-to-place transfer of its plenary municipal retail consumption license.

The Borough Council adopted the distance ordinance in final form on February 5, 1980 and two days later, notice of the adoption appeared in the local newspaper.

On May 6, 1980, after the Council had received a legal opinion concerning the applicability of the distance ordinance to the Lo-Ran transfer, the Council denied the place-to-place transfer at one of its regular scheduled meetings.

The administrative law judge noted that although *N.J.A.C. 13:2-7.10(c)* affords an applicant an opportunity to be heard before an application is disapproved, it was unnecessary in this case to determine if such a hearing had been held. Observing that it was well settled that a municipality must apply an ordinance in effect at the time it makes its decision, the judge concluded that the effective date

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of the new distance ordinance was February 7, 1980, the date on which it was published in the local newspaper. Accordingly, that ordinance was binding upon the Bound Brook Council when appellant requested a hearing and when the Council voted to deny the application.

While noting that equitable considerations might preclude the enforcement of such a statute, the judge observed that the appellant had failed to raise any such issue.

Accordingly, the administrative law judge ordered that the action of the Council be affirmed.

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**Nachum Bar-Din**, Esq, for Appellant

**Michael W. Berdinella**, Esq. and **William Welaj**, Esq., for Respondent

**LEFELT, ALJ:**

Lo-Ran, Inc., a New Jersey corporation, claims that the Borough of Bound Brook should not have denied its application for an alcoholic beverage license transfer without affording it a hearing. Bound Brook contends that a hearing was not required because the location for the proposed transfer violates a valid municipal ordinance controlling the distance between alcoholic beverage establishments.

After Lo-Ran, Inc. appealed Bound Brook's action, this matter was transmitted on June 20, 1980 to the Office of Administrative Law for disposition as a contested case pursuant to *N.J.S.A. 52:14F-1*, *et seq.* and *N.J.S.A. 52:14B-1*, *et seq.*

*FACTS*

The parties agreed to a number of stipulations and based upon their stipulations I adopt the following facts.

On August 14, 1979, the Borough of Bound Brook repealed a 1949 Ordinance which was designed to keep licensed premises at least 700 feet apart.

However, after the local election results in November, 1979, steps were immediately initiated to reestablish the 1949 Ordinance, and on January 15, 1980, the newly elected Borough Council introduced and passed at first reading Ordinance 80-1, prohibiting the transfer of any plenary retail distribution/consumption license for sale or service of alcoholic beverage to any location which is within 700 feet of any existing licensed premises.

On January 31, 1980, the same day that the Notice of Application of the proposed Ordinance 80-1 first appeared in the newspaper, the

*Bound Brook Chronicle*, appellant Lo-Ran, Inc. filed an application for a person-to-person and place-to-place transfer of a Plenary Municipal Retail Consumption License known as C-14 and 1804-38-014-001. The appellant sought approval of a person-to-person transfer, as well as permission to relocate the license to 552 West Union Avenue, Bound Brook, New Jersey.

The Borough Council adopted proposed Ordinance 80-1 after a second and final reading at a regularly scheduled meeting held on February 5, 1980. Two days later, on February 7, 1980, publication that adoption had occurred appeared in the *Bound Brook Chronicle*.

In the meantime, notice of Lo-Ran's application for a liquor license transfer was published in accordance with *N.J.A.C.* 13:2-7.7 on January 31 and again on February 7, 1980, the same date that notice of the adoption of Ordinance 80-1 was published.

Thereafter, Lo-Ran on April 15, 1980 requested the Borough Council to provide a hearing on its application. On April 15, 1980, the Council President and Mayor stated that a hearing could be scheduled after Lo-Ran met with the Borough "Police Committee" and that such a meeting would be held before Lo-Ran's application was considered. A meeting of the Police Committee was held on April 24, 1980 at Borough Hall. Notification of this meeting was not sent to either Lo-Ran or Lo-Ran's counsel and neither party attended the Police Committee's meeting. The Council on April 15 also advised appellant that its application would definitely be considered at the regular meeting of the Borough Council scheduled for May 6, 1980. On May 6, 1980, after the Council had received a legal opinion concerning the applicability of Ordinance 80-1 to the Lo-Ran transfer, the Council unanimously denied the application. The Council took no position on the person-to-person portion of the transfer application, but after questioning counsel for appellant, denied the application because the transfer would violate the 700-foot distance requirement contained in Ordinance 80-1.

Also, based on the parties' stipulation of facts and my reading of the Ordinance, **I CONCLUDE** that should Ordinance 80-1 be held legally controlling, the Ordinance would be violated if Lo-Ran's transfer application were approved. However, if Ordinance 80-1 is inapplicable to the place-to-place transfer, the proposed location for the license according to the parties' stipulation would not violate *N.J.S.A.* 33:1-73.

#### ISSUES

The Borough's legal position is that a hearing was not necessary because the transfer was clearly prohibited by Ordinance 80-1. Lo-

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Ran contends, without citing a single case, statute, regulatory authority or any other precedent, that the transfer is not prohibited by Ordinance 80-1, since the Ordinance was not enacted until after the appellant applied for the liquor license transfer. Lo-Ran thus seeks a remand to the local issuing authority for a hearing or approval of the place-to-place and person-to-person transfer.

#### LEGAL ANALYSIS

*N.J.A.C.* 13:2-7.10(c) provides that "the issuing authority shall not disapprove the application without first affording the applicant an opportunity to be heard and providing the applicant with at least five days notice thereof. . . ." A trial-like hearing need not be held under this subsection. Therefore, it could be determined that respondent substantially complied with *N.J.A.C.* 13:2-7.10(c) by advising appellant on April 15, 1980 of its meeting on May 6, 1980 and by addressing questions to counsel for appellant at its May 6, 1980 meeting. Nevertheless, for the following reasons it is unnecessary to decide whether a hearing in accordance with the dictates of due process and *N.J.A.C.* 13:2-7.10(c) has in fact been provided. Indeed, without exploring precisely what occurred at the May 6, 1980 meeting, there is some question whether such a determination could be made on this record. For example, we do not know whether any factual dispute existed, whether the meeting was recorded or whether the Council administered the oath to any person questioned at the May 6, 1980 meeting. See, *Nordco, Inc. v. State*, 43 *N.J. Super.* 277 (App. Div. 1957).

Whether or not a hearing as required by *N.J.A.C.* 13:2-7.10(c) was provided in this case, it is clear that a local body cannot grant a license transfer in violation of a local ordinance. *Petrangeli v. Barrett*, 33 *N.J. Super.* 378, 384 (App. Div. 1954). In addition, the ordinance in effect at the time the municipality makes its decision must be applied by the municipality. See, *Burcam Corp. v. Medford Planning Bd.*, 168 *N.J. Super.* at 512; cf. *Hynes v. Mayor and Council of Oradell*, 66 *N.J.* 376, 379 (1975), rev'd. on other grounds, 425 *U.S.* 610 (1976); and *State v. Lawn King, Inc.*, 169 *N.J. Super.* 346 (App. Div. 1979).

The rules employed in construing ordinances are the same as those utilized in construing statutes. *L.P. Marion and Co. v. Mahwah Township*, 39 *N.J.* 74, 80 (1963). Statutes ordinarily take effect only from the time of passage and approval unless a contrary intent is clearly expressed or implied. *Harrington Co. v. Chapke*, 108 *N.J. Eq.* 297, 302 (Ch. 1931), aff'd., 110 *N.J. Eq.* 574 (E. & A. 1932). Ordinance 80-1 provides that it "shall take effect immediately upon pas-

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sage and publication as required by law.” Where an ordinance provides that it shall be effective upon passage and publication, *Bruno v. Borough of Shrewsbury*, 2 *N.J. Super.* 550, 555 (Law Div. 1949) holds that the ordinance does not “go into effect” until the day it is published in a newspaper circulated in the municipality. Consequently, **I CONCLUDE** that the effective date of Ordinance 80-1 is February 7, the date on which it was published in the *Bound Brook Chronicle* and that, therefore, Ordinance 80-1 was binding upon the Bound Brook Council on April 15 when appellant requested a hearing and on May 6, 1980 when the Borough decided to deny the transfer application.

Equitable considerations might preclude a municipality from enforcing such an ordinance, e.g., *Tremarco Corp. v. Garzio*, 32 *N.J.* 448 (1960). However, Lo-Ran has not asserted any facts from which I could conclude that there are equitable reasons to preclude the application of Ordinance 80-1 to the proposed transfer. Indeed, such facts might be difficult to present in view of the thirty-year history of Bound Brook’s control over the distance between alcoholic beverage establishments.

#### CONCLUSIONS

It is important to note that the development of public sentiment at the local level is often crucial in these matters, e.g., *Lyons Farms Tavern v. Newark Board of Alcoholic Bev. Control*, 55 *N.J.* 292 (1970). In addition, much responsibility for the enforcement of alcoholic beverage laws relating to liquor license transfers rests with the municipal authorities. See, *Lyons Farms Tavern*. State procedures thus should not foster bypassing the local authorities, and local authorities should usually comply with the dictates of *N.J.A.C.* 13:2-7.10(c) by providing a hearing before deciding to disapprove transfer applications. I conclude only that in this case for the reasons expressed above, a remand to the Borough to conduct a hearing in accordance with *N.J.A.C.* 13:2-7.10 would be futile and unnecessary. The Borough lacks power to grant the transfer and therefore did not abuse its discretion by denying the application. *South Bergen County Licensed Bev. Assoc. v. East Rutherford Borough Council*, *ABC Bulletin No. 2340*, Item No. 3 (July 19, 1979).

Furthermore, the appellant had available to it a *de novo* hearing provided by the Office of Administrative Law, which is designed in part to cure any procedural defects below. *Loyal Order of the Moose v. Galloway Township Committee*, *ABC Bulletin No. 2291*, Item No. 3 (Feb. 15, 1978). Instead of offering testimony or exhibits at this

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hearing, Lo-Ran, by stipulations of fact, raised its right to a hearing under *N.J.A.C.* 13:2-7.10(c) as the sole reason for reversal.

Appellant has not met its burden of showing that the Municipal action was a manifest mistake, clearly unreasonable, or some more untoward impropriety. *Rajah Liquors v. Div. of Alcoholic Bev. Control*, 33 *N.J. Super.* 598, 600 (App. Div. 1955), certif. den., 18 *N.J.* 204 (1955).

*DISPOSITION*

I, therefore, shall affirm the action of the respondent Borough of Bound Brook, and **ORDER** that this appeal be dismissed.

**After reviewing this Initial Decision the  
Division of Alcoholic Beverage Control on  
October 20, 1981 issued the following Final Decision**

No written Exceptions to the initial decision below were filed by the parties herein, pursuant to *N.J.A.C.* 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, and the initial decision, I concur in the findings and recommendations of the administrative law judge, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of October, 1981,

**ORDERED** that the action of the respondent, Borough Council of Bound Brook be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.