

**1STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE DIVISION OF)
ALCOHOLIC BEVERAGE CONTROL’S)
DISCRIMINATORY ENFORCEMENT)
AGAINST LICENSEES SERVING LGBTQ+)
PATRONS FROM 1934 TO 1967)
_____)

SR 2021-06
SPECIAL RULING

BY THE DIRECTOR:

For 33 years, the Division of Alcoholic Beverage Control (“ABC”) blatantly used its rulemaking authority, enforcement powers, and resources to target and punish licensees that allowed LGBTQ+ patrons on their premises. This outright discriminatory treatment did not end until 1967, when the New Jersey Supreme Court ruled that LGBTQ+ individuals had a right to peacefully congregate in licensed establishments, and those establishments had a right to serve them. Undoubtably, discriminatory conduct and attitudes persisted well after 1967, although no longer expressed through formal ABC enforcement actions. The Attorney General has recently issued Executive Directive No. 2021-08 which, among other things, directs the ABC to take action to address this offensive history, and in relevant part to issue this Special Ruling to formally acknowledge and condemn its prior enforcement actions. To be clear – ABC cannot undo the harm caused by this historical wrong. But it can address its past malpractices and commit to higher principles of regulatory conduct beyond those required by law.

I. Background

Beginning in 1933, ABC issued approximately 2,500 bulletins, comprised of enforcement actions, agency decisions, rule adoptions, changes in the law, ABC policies, and assorted notices

to licensees and the alcoholic beverage industry. The bulletins have been digitized and made searchable by the New Jersey State Library and are archived on the [library's online database](#). In conjunction with this Special Ruling, the bulletins were reviewed using search terms traditionally associated with LGBTQ+ individuals.¹ Prior to the 1950s, ABC did not use the term “homosexual,” referring instead to “female impersonators” or explicitly slanderous language as quoted below.

This appalling language is particularly offensive by today's standards, and individuals may find it harmful and triggering to read. It is recited in this Special Ruling solely for the purposes of acknowledging and repudiating ABC's prior wrongful conduct. Please note that in some instances, quoted passages from enforcement actions and judicial rulings have been edited to remove language inappropriate for publication. The original, unedited language remains accessible via the ABC Bulletins published as part of this initiative.

In 1934, the year after Prohibition was repealed and the Alcoholic Beverage Control Law was enacted, the newly formed New Jersey Department of Alcoholic Beverage Control promulgated rules governing the conduct of liquor licensees.² Rule Four provided, “[n]o licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters...prostitutes, female impersonators, or other persons of ill repute.” The rule was prompted in part by the alcoholic beverage industry, which sought to prohibit female impersonators from performing in saloons.³ The term “female impersonators” was eventually used

¹ ABC and municipal issuing authorities have concurrent jurisdiction to bring enforcement actions against retail licensees. N.J.S.A. 33:1-31. Thus, municipal issuing authorities may have pursued their own discriminatory enforcement actions against LGBTQ+-friendly licensees that were not documented or memorialized in the ABC bulletins.

² ABC Bulletin 48, Item 1 (1934).

³ “Female Impersonators Are Taboo in Saloons,” *The Herald-News*, July 21, 1934, p. 1; “Impersonators Will Be Barred,” *The Bergen Evening Record*, July 27, 1934, p. 9.

to describe LGBTQ+ individuals as a way of prohibiting their presence at licensed establishments.

ABC's first commissioner, D. Frederick Burnett, described conduct in openly homophobic terms:

The licensee declared emphatically that he did not know that the men who were ousted were perverts [. . .] or, more politely, female impersonators.

However, the defendant's signed statement...and the testimony of the investigators convince me that female impersonators were knowingly permitted in the defendant's tavern and that, in fact, the tavern was a rendezvous for such persons....

There is no excuse for this sort of thing. If a licensee disapproves [. . .] and they refuse to leave on his demand, he may always resort to the simple expedient of calling the police.⁴

Licensees that catered to or welcomed LGBTQ+ patrons faced discriminatory treatment at every turn. For example, in June 1939, ABC suspended the plenary retail consumption license of Peter Orsi for 30 days for allowing "female impersonators" in his tavern in Newark.⁵ The suspension led the City of Newark to refuse to renew Mr. Orsi's license.⁶ Commissioner Burnett affirmed the city's refusal, concluding that it was "particularly abhorrent" for a licensee to allow such congregation.⁷ On appeal to the New Jersey Supreme Court, Justice Charles Wolcott Parker denied certiorari, referring to the licensees' patrons as "perverts."⁸

Beginning in or around 1950, ABC charged licensees with violating Rule Four (i.e., permitting female impersonators) as well as Rule Five, which prohibited licensees from permitting a nuisance on the licensed premises.⁹ Enforcement actions by ABC were often based on mere allegations that male patrons conducted themselves in an "effeminate manner."¹⁰ Dubious

⁴ ABC Bulletin 326, Item 1 (1939).

⁵ Ibid.

⁶ ABC Bulletin 352, Item 2 (1939).

⁷ Ibid.

⁸ ABC Bulletin 359, Item 13 (1939).

⁹ ABC Bulletin 892, Item 2 (1950).

¹⁰ ABC Bulletin 892, Item 2 (1950). In some cases, female patrons were alleged to have conducted themselves in a

evidence and testimony were used to substantiate the charges, for example—“[T]hree homosexuals were on the premises for at least one hour and twenty minutes.”¹¹ In some cases, patrons were apprehended by police, interrogated, and forced to testify in disciplinary proceedings.¹² Licensees were routinely deprived of a fair hearing by an unbiased decision maker, as demonstrated in the proceeding against licensee One-Thirty-Five Mulberry St. Corp.:

In their testimony the various [ABC] agents recited numerous incidents which occurred on the licensed premises wherein various male patrons gave evidence of abnormal behavior. Many of these incidents involved disgusting and revolting moral degeneration and were accompanied by equally shocking, filthy and obscene language -- much of it in the jargon of sexual perverts....

The revolting situation disclosed by the testimony in this case cannot be permitted to continue. There can be no excuse for permitting this sort of conduct on licensed premises.¹³

From 1934 to 1967, licensees were faced with the choice of ejecting and barring patrons who were known or perceived to be homosexuals or jeopardizing their licenses and livelihoods.¹⁴ As a practical matter, they had no legal recourse: the courts consistently affirmed the ABC’s enforcement actions.¹⁵ In 1956, a licensee in Asbury Park, Paddock Bar, was charged with violating Rule Five by permitting “female impersonators and persons who appeared to be homosexuals” on the licensed premises; allowing them to congregate in large numbers; and conducting business “in a manner offensive to common decency and public morals[.]”¹⁶ A hearing

“mannish” manner. ABC Bulletin 1133, Item 2 (1956); ABC Bulletin 1218, Item 2 (1958).

¹¹ ABC Bulletin 1356, Item 2 (1960).

¹² ABC Bulletin 892, Item 2 (1951).

¹³ Ibid.

¹⁴ ABC Bulletin 1073, Item 4 (1955).

¹⁵ Paddock Bar, Inc. v. Div. of Alcoholic Beverage Control, 46 N.J. Super. 405 (App. Div. 1957); Murphy’s Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961); Carelis v. Div. of Alcoholic Beverage Control, No. A-582-60 (App. Div. Dec. 21, 1961); C. & S. Tavern Corp. v. Div. of Alcoholic Beverage Control, No. A-611-65 (App. Div. Nov. 29, 1966); ABC Bulletin 1430, Item 1 (1961); ABC Bulletin 1701, Item 1 (1966).

¹⁶ ABC Bulletin 1159, Item 2 (1957).

was held, and the Director acknowledged on the record that no “overt acts of lewdness” or “immoral activity” took place on the premises at any time.¹⁷ Nevertheless, he imposed a 60-day suspension on Paddock Bar, concluding that “the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices.” On appeal to the Appellate Division, the court acknowledged there was no proof of licentious conduct, and the evidence did not even establish with certainty that the patrons were homosexual.¹⁸ Yet the court deemed the evidence sufficient to infer they were homosexual (based on what the court perceived as conspicuous guise, demeanor, carriage, appearance, effeminate pitch) and affirmed the suspension, ruling that “it is inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud.”¹⁹

Challenging an ABC enforcement action for permitting apparent homosexuals on the premises was so futile, many licensees pled guilty or non vult (“no contest”) in the hope of a reduced penalty.²⁰ Other licensees put on an affirmative defense to no avail. In 1954, a licensee in Paterson, N.Y. Bar, was charged with permitting “female impersonators” and “numerous persons who appeared to be homosexuals” on the licensed premises, and a hearing was held.²¹

¹⁷ Ibid.

¹⁸ Paddock Bar, Inc., 46 N.J. Super. at 408 (App. Div. 1957).

¹⁹ Ibid.

²⁰ ABC Bulletin 1050, Item 1 (1950); ABC Bulletin 1045, Item 7 (1950); ABC Bulletin 1123, Item 2 (1956); ABC Bulletin 1145, Item 1 (1957); ABC Bulletin 1161, Item 3 (1957); ABC Bulletin 1168, Item 3 (1957).

²¹ ABC Bulletin 1063, Item 1 (1955).

Among the licensee’s witnesses was a psychiatrist who opined that “homosexuality is not contagious” and “seeing a group of homosexuals would not harm the average” person.²² Counsel for the licensee argued that “homosexuals are not a menace to society and cannot be [legally] barred from licensed premises.”²³ But the Director rejected the defense and substituted his own specious opinion, concluding that “homosexuals may well have a harmful effect on some members of the public. Furthermore, where they congregate and conduct themselves in a manner hereinbefore related, they are a threat to the safety and morals of the public.”²⁴

By the 1960s, public attitudes towards the LGBTQ+ community were evolving, and harassing them for peaceably congregating was becoming less acceptable. In 1965, a licensee in New Brunswick, One Eleven Wines & Liquors, was charged with violating Rule Five by permitting “persons who appeared to be homosexuals, e.g. males impersonating females” to congregate on the premises.²⁵ Counsel for the licensee argued there was no proof that the patrons were homosexual—and even if they were, the Civil Rights Act (now known as the Law Against Discrimination (LAD)) prevented the licensee from ejecting them in the absence of an actual disturbance.²⁶ The Director rejected these arguments²⁶ and imposed a 60-day suspension.²⁷ The licensee appealed to the Appellate Division, which affirmed the suspension.²⁸ However, the New Jersey Supreme Court reversed the suspension in 1967, ruling that homosexuals had a right to congregate in licensed establishments as long as their public behavior conformed with currently acceptable standards of decency and morality.²⁹ The Court rejected ABC’s baseless contention

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ ABC Bulletin 1656, Item 5 (1966).

²⁶ Ibid.

²⁷ Ibid.

²⁸ ABC Bulletin 1695, Item 1 (1966).

²⁹ One Eleven Wines & Liquors, Inc. v. Div. of Alcoholic Beverage Control, 50 N.J. 329, 339 (1967).

that the presence of “apparent homosexuals” on a licensed premises was harmful and contrary to the public welfare.³⁰

Following the Court’s decision, ABC dismissed all pending charges against licensees for permitting “apparent homosexuals” to congregate on the premises.³¹

II. Apology & Directive

Today, the New Jersey LAD expressly prohibits discrimination based on sexual orientation, gender identity, or expression. But that does not rectify the injustices of the past: from 1934 to 1967, ABC used its statutory mandate to “strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State” as a pretext to oppress a vulnerable minority of the people of this State.³² With the issuance of Attorney General Executive Directive No. 2021-08, Attorney General Grewal has demanded that we shine a light on this history in an effort to root out and eliminate discrimination. Working with the Attorney General, the ABC issues this Special Ruling and will take steps to strengthen the relationship between ABC and the LGBTQ+ community.

On behalf of ABC, I apologize to licensees and the LGBTQ+ community for the pain and harm caused by ABC’s homophobic and transphobic conduct and rhetoric. I condemn these actions. I also pledge on behalf of this agency and its staff that ABC will accord respect, dignity, fairness and appropriate due process to all parties and persons before it and will not discriminate—or by extension allow licensees or permittees to discriminate—against protected classes or the public. In addition, I acknowledge and affirm the mandates set forth in the AG Executive Directive No. 2021-08:

³⁰ Id. at 340-41.

³¹ ABC Bulletin 1804, Item 6-7 (1968); ABC Bulletin 1805, Item 7 (1968).

³² N.J.S.A. 33:1-3.1(b)(1).

- **Vacation of charges premised on violations of Rules Four and Five.** Through this Special Ruling, and consistent with the Supreme Court’s decision in One Eleven Wines & Liquors, Inc., I am vacating all disciplinary charges against licensees from 1934 to 1967 alleging violations of Rules Four and Five for allowing “female impersonators” and “apparent homosexuals” to congregate on their licensed premises.
- **Publication of ABC historical records.** ABC is making available its historical records on its website, which is accessible [here](#). The full records can also be accessed through the following link: [ABC Bulletins related to LGBTQ+ \(1934 to 1967\)](#).
- **Strengthening relationship between ABC and the LGBTQ+ community.** In order to reinforce ABC’s commitment to higher principles of regulatory conduct, and consistent with training provided to other Divisions within the Department of Law & Public Safety, I am directing all ABC investigators and deputy attorneys general to receive anti-bias training, and attend cultural diversity training offered through the Attorney General’s Community Law Enforcement Affirmative Relations (CLEAR) Continuing Education Institute. ABC will also work with the alcoholic beverage industry, including the Licensed Beverage Association, the New Jersey Restaurant and Hospitality Association, and other stakeholder groups to promote this message of inclusivity and the importance of cultural diversity awareness and training.
- **Identification of other potential discriminatory actions.** ABC will undertake a further historical review of its bulletins and past actions to determine if its

enforcement authority was ever used in a discriminatory manner against other protected classes or the public. Our findings will be made public and corrective action will be taken as appropriate. In accordance with the Attorney General's directive, this review shall be completed for a report back to the Attorney General no later than October 15, 2021.


JAMES B. GRAZIANO
DIRECTOR

Dated: June 29, 2021
APW/RL