

Interest in Alcoholic Beverage Retail License

Directive #11-88
Issued by:

August 8, 1988
Chief Justice Robert N. Wilentz

Until April 1985 the Division of Alcoholic Beverage Control (ABC) interpreted its statutes and regulations to prohibit any interest by a judge in a liquor license. The ABC changed its position in *In re Green Parrot, Inc. and Montego Bay, Inc.*, decided April 19, 1985, in which the Director determined that a Superior Court Judge is not disqualified by statute or regulation from holding such an interest. Subsequently, by letter of April 25, 1986 the Deputy Director of the ABC advised that the determination would apply also to a municipal court judge, with the proviso that "the possession of a licensed interest in a retail license could not exist in a community where the individual exercised his powers as a municipal magistrate."

Subsequently the Supreme Court has had occasion to consider whether holding of such interests either directly or indirectly is consistent with the rules which govern judicial conduct. The Court has determined that it would be improper for a judge of the Superior Court, the Tax Court, or a Municipal Court to acquire an interest in an alcoholic beverage license. This prohibition is prospective only and commences as of the date of this Directive.

The Court based its determination upon Canons 1 and 2 of the Code of Judicial Conduct in that an appearance of impropriety can arise when a judge applies for a retail license because of the power and prestige of the judicial office. The same consideration applies to maintaining the license. It may also apply to owning an interest in premises where a license is operated. The Court considered also public attitudes toward the societal effects of alcohol consumption and the fact that it is involved in many areas of litigation.

A Superior Court, Tax Court, or municipal court judge who presently holds an interest in a retail license is advised by the Court to disqualify himself or herself in all DWI cases and in any case that in any way involves liquor licenses or in which that interest might create an appearance of bias, *e.g.*, dram shop cases, social host liability cases, and the like so long as the judge continues to hold such interest.

EDITOR-S NOTE

No change has been made to the original text.