

(Series 1971)
Divisional Order #625
January 14, 1971

TO: ZONE OFFICES AND LOCAL BOARDS

SUBJECT: PACKAGE STORE LICENSES - ENCLOSED SHOPPING CENTERS

In a very recent decision (Alro Liquors, Inc. v. S.L.A.), The Court of Appeals decided that malls in enclosed shopping centers are "public thoroughfares" and stores fronting on such malls may be licensed within the language of Section 105(2) of the Alcoholic Beverage Control Law.

The applicant sought a package store license for premises located in a completely enclosed and roofed shopping center identified as the Greece Town Mall in Rochester. The shopping center contains 62 stores under one roof. Four entrances to the center lead into a "T" shaped interior arcade which runs between three rows of stores. The proposed store has no direct entrance or windows on the street or on the parking area and faces upon the interior arcade. Access to the proposed store is only through the entrance to the shopping center and by way of the interior arcade. The entrance doors to the center are under the exclusive control of the landlord. There is no visibility into the store from outside the shopping center.

The Authority denied the application upon the mandatory ground that the premises are not located on a public thoroughfare or on an arcade leading to a railroad terminal, and upon the further ground that the proposed premises do not afford proper and adequate visibility into the interior thereof by law enforcement authorities.

In an Article 78 proceeding instituted by the licensee, the Appellate Division of the Supreme Court, Fourth Department, by a divided court, ruled that to deny licenses for premises located on covered arcades in shopping centers is too narrow an interpretation of the words "public thoroughfare" found in Section 105(2) of the Alcoholic Beverage Control Law. Proceeding from the fact that package stores in shopping centers, per se, are being licensed by the Authority, the Court ruled that "to refuse to license these premises, one of 62 stores in a center through which literally thousands of people pass each day, simply because of its modern architectural conception, which truly advanced the convenience and advantage of the public," is not warranted.

The Court also held that while the visibility required by statute must be from the sidewalk into the interior of the store, this objection carried no weight since there is a clear and unobstructed view into the interior of the store from the passageway in front over which the public travels, thus affording every opportunity for unimpeded surveillance at all times except when the shopping center is closed.

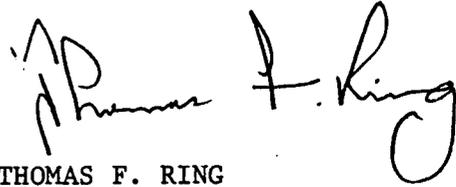
On appeal by the Authority, the Court of Appeals unanimously affirmed

the decision of the Appellate Division.

Accordingly, henceforth, applications for package store licenses for premises located in an enclosed, modern shopping center will be determined by the Authority in the light of the Courts' rulings.

Nevertheless, the extension of the phrase "public thoroughfare" to enclosed malls should be limited to shopping centers and to no other type of building having an arcade, such as a hotel, large office building or department store.

STATE LIQUOR AUTHORITY

A handwritten signature in cursive script that reads "Thomas F. Ring". The signature is written in dark ink and is positioned to the right of the printed name.

THOMAS F. RING
Chairman