

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

IN THE MATTER OF THE ORDER OF THE)
FRIENDLY SONS OF THE SHILLELAGH)
OCEAN COUNTY REQUEST FOR WAIVER)
UNDER N.J.A.C. 13:2-8.4 FOR ISSUANCE)
OF A CLUB LICENSE PURSUANT TO)
N.J.S.A. 33:1-12(5))
_____)

SR 2022-03
SPECIAL RULING GRANTING
REQUEST FOR WAIVER
OF N.J.A.C. 13:2-8.4

BY THE DIRECTOR:

I. Background.

The Division of Alcoholic Beverage Control (“Division” or “ABC”) received a waiver request pursuant to N.J.A.C. 13:2-8.5(a) and (b), and supporting documents, submitted by the Order of the Friendly Sons of the Shillelagh Ocean County (the “Club” or “Friendly Sons of the Shillelagh” or “Order”) to be sited at 609 East Bay Avenue in Manahawkin, New Jersey. The Club is a 501(c)(3) nonprofit Irish-American social organization with the stated purpose of promoting and enhancing the fraternity and good fellowship within the Irish-American community. The Friendly Sons of the Shillelagh needs a club waiver because it does not meet all of the requirements for qualifying for a Club License pursuant to N.J.S.A. 33:1-12(5) and its implementing regulations.

A Club License is a “Class C License” under N.J.S.A. 33:1-12(5) that permits the holder of such license to sell alcoholic beverages for immediate consumption upon licensed premises and only to *bona fide* members of the club and their guests. Under N.J.A.C. 13:2-8.1, a *bona fide* club consists of sixty or more persons, of legal drinking age, operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private

gain. Under N.J.A.C. 13:2-8.3 a *bona fide* club must have been in active operation in New Jersey for at least three years continuously immediately prior to its submission of its application for a Club License. Moreover, under N.J.A.C. 13:2-8.4, a club must have been in exclusive possession and use of a clubhouse for at least three years continuously immediately prior to the submission of its application for a license.

Friendly Sons of the Shillelagh satisfies the requirements that a Club must be a *bona fide* club having sixty or more members of legal drinking age and has been in active operation in New Jersey for at least three years continuously immediately prior to its submission of its Club License application. However, the Club does not satisfy the requirement as found in N.J.A.C. 13:2-8.4 that states that a club must have been in exclusive possession and use of a clubhouse for at least three years continuously immediately prior to the submission of its application for a license.

Friendly Sons of the Shillelagh is requesting a relaxation of this one provision. N.J.A.C. 13:2-8.4. It is basing its request on its demonstration of special cause and by providing satisfactory proof that it has been duly credentialed by a national or state order, organization or association, which has been in active operation in this State for at least three years continuously immediately prior to the application submission date. N.J.A.C. 13:2-8.5(a) and (b).

Friendly Sons of the Shillelagh has submitted to the Division the following list of documents in support of its waiver request:

- 1) Undated cover letter to Director James Graziano, from former President Kenneth Hansen, introducing the Order and explaining the basis for the Order's request for relaxation of provision N.J.A.C. 13:2-8.4;
- 2) Base of operations: Document stating that the Order has one general membership meeting per month, on the last Monday of every month; since inception, most of the meetings have been held at the Manahawkin Elks Lodge at 520 Hilliard Blvd., Manahawkin, New Jersey. Meetings have also

been held at the Loyal Order of the Moose located at 120 N. N-72 in Manahawkin, New Jersey;

- 3) Minutes from Dec. 28, 2020 General Membership Meeting;
- 4) Certificate of Incorporation pursuant to N.J.S.A. 15A:2-8, New Jersey Nonprofit Corporation Act, for Order of the Friendly Sons of the Shillelagh Ocean County, signed Jan. 23, 2017, filed Feb. 3, 2017 with the New Jersey State Treasurer;
- 5) Department of the Treasury, Internal Revenue Service, determination letter dated May 17, 2017, to the Order of the Friendly Sons of the Shillelagh Ocean County, stating that the Club is exempt from federal income tax under Internal Revenue Code Section 501(c)3;
- 6) Resolution 2021-375, dated November 23, 2021, signed by Linda Martin, RMC, Municipal Clerk, Township of Stafford, expressing support for the issuance of a Club License to the Friendly Sons of the Shillelagh Club Ocean County; stating that the Township does not find the application or request for waiver objectionable; that the Club is not prevented from obtaining a Club License due to any violation of the laws of the State or of any municipal ordinance; and that there is no objection by the members of the public or Governing Body to the issuance of a Club License to the Friendly Sons of the Shillelagh Club;
- 7) The Friendly Sons of the Shillelagh Club's list of Officers and Board of Trustees, with addresses;
- 8) Club Members:
 - a. A complete list of the Members (currently, 115) of the Friendly Sons of the Shillelagh Club, pursuant to N.J.A.C. 13:2-8.1 and N.J.A.C. 13:2-8.7;
 - b. Each Member's filed written application submitted to the Friendly Sons of the Shillelagh Club's appropriate body, as set forth in its Bylaws;
 - c. Documentation, including the dates that the written application of each Member was initially filed and the dates the application was accepted and approved by the Friendly Sons of the Shillelagh Club's appropriate body, as set forth in its Bylaws, which are all at least three days subsequent to the filing of the prospective Member's filed written application.
- 9) Document stating Membership Dues are \$100 annually, to be paid in full by April 1st of the year; a table that demonstrates how the dues were allocated, the date, and the purpose for the dues allocations;

- 10) Alcoholic Beverage License Application for a new Club License, dated Feb. 26, 2020, submitted by the Club; filed and signed by Linda Martin, Municipal Clerk;¹
- 11) Asbury Park Press Order and Affidavit of Publication of notice of Friendly Sons of the Shillelagh Club's application for a Club License; Feb. 27, 2020, and March 5, 2020, publication dates;
- 12) Copy of publication notice;
- 13) Letter to Mayor Gregory E. Myhre and the Council of Stafford Township from James McCabe, (undated), President of the Order of the Friendly Sons of the Shillelagh Ocean County requesting township support for the issuance of a Club License to the Club, and notifying the local issuing authority of its intent to seek the requested Club License waiver to relax the provision that the Club must have previous period of possession and use of club house for three years continuously immediately prior to application for the Club License;
- 14) Charter granted by the Order of the Friendly Sons of the Shillelagh Old Bridge to the new Chapter to be known as the Order of the Friendly Sons of the Shillelagh of Ocean County, subject to the Constitution and Bylaws of the parent chapter of the Order of the Friendly Sons of the Shillelagh; dated November 28, 2016; signed by President Jim Hartwyk, Vice President Jeff Schuld, Recording Secretary Dennis Pinkiewicz, and Treasurer Jim Connor; indicating that the Order "has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license." N.J.A.C. 13:2-8.5(a);
- 15) Letter dated March 28, 2021, from James B. Sullivan, President, Old Bridge Chapter of the Order of the Friendly Sons of the Shillelagh, to DAG Cohn, dated March 28, 2021, stating that the parent organization was founded in 1964 and incorporated in August of that year, with continuous operation since then at 15 Oak Street in Old Bridge, New Jersey; three other chapters have been chartered over the years: West Orange, Belmar and Ocean County Chapters;
- 16) Copy of Club License (No. 1209-31-039-002) issued to Old Bridge Chapter of the Order by the Division, effective date 7/1/2020;²
- 17) A copy of the fully executed Friendly Sons of the Shillelagh Club's Bylaws;

¹ There is no limit to the number of club licenses that a municipality may issue. A.B.C. Bulletin 456, Item 9 (May 1, 1941). However, a municipality may, by ordinance, decide not to issue any club licenses or decide to increase or limit the number that shall be issued. N.J.S.A. 33:1-12(5).

² According to the Division's online licensing system POSSE, the parent chapter was issued a renewal license on July 1, 2021 for the 2021-2022 license term.

- 18) Tax returns (tax years 2017, 2018, 2019) that demonstrate that the Order of the Friendly Sons of the Shillelagh Club of Ocean County is a 501(c)(3) non-profit corporation that is not for private gain (N.J.A.C. 13:2-8.1);
- 19) Original Lease Agreement by and between the Order of the Friendly Sons of the Shillelagh Club Ocean County and Manahawkin Acquisition, LLC, the landlord for 609 East Bay Avenue in Manahawkin, New Jersey, dated December 12, 2019;
- 20) Guarantee of Lease, dated December 12, 2019, by and between Kenneth Hansen and James McCabe, as individuals, to and in favor of Manahawkin Acquisition, LLC;
- 21) First Amendment to Lease Agreement, dated November 13, 2020; and
- 22) Second Amendment to Lease Agreement, dated January 3, 2022, demonstrating that the Club is in present possession of a suitable premise located at 609 East Bay Avenue in Manahawkin, New Jersey, as of January 1, 2022.

In the Club's letters to the Division, it was explained that the Ocean County Order of the Friendly Sons of the Shillelagh is the newest chapter of the parent organization that was founded in 1964 and incorporated in August of that year. The parent organization has been in continuous operation since that date at its location at 15 Oak Street in Old Bridge, New Jersey. It also holds an active Club License that it has held since July 1, 1968. Under the Club's constitution, the parent organization has chartered three other chapters in New Jersey located in West Orange, Belmar and Ocean County. The Ocean County chapter was formed on November 28, 2016 and since that time has grown to 115 members. The Ocean County chapter has based its operations in different locations in Manahawkin within Stafford Township, namely the Manahawkin Elks Lodge and the Loyal Order of the Moose. The Friendly Sons of the Shillelagh hosts the very popular annual Ocean County Irish Festival each September in Manahawkin, New Jersey. The family event includes Irish entertainment, foods and crafts, and draws thousands of visitors each year to the

area, to meet and celebrate their Irish heritage. It has become a highly anticipated event for Stafford Township and the surrounding communities.

Since January 1, 2022, the Club has leased a suitable premise as demonstrated by the Second Amendment of Lease Agreement between the Club and Manahawkin Acquisition, LLC, for the premise located at 609 East Bay Avenue in Manahawkin, New Jersey. The premise is approximately 1600 square feet and is located within a retail development. Having only recently entered into the lease of the premises, the Club acknowledges that it does not satisfy the provision that the Club must have been “in exclusive possession of a clubhouse or club quarters for at least three years continuously immediately prior to submission of its application for a license.” N.J.A.C. 13:2-8.4.

The Club is applying for a Club License waiver to operate the Club and sell alcohol to its members and their guests at their newly leased location at 609 East Bay Avenue in Manahawkin, New Jersey.

II. Legal Analysis.

It is the Director’s duty to supervise the manufacture, distribution and sale of alcoholic beverages in a manner that fulfills the public policies and legislative purposes of the Alcoholic Beverage Control Act (“ABC Act”). Of particular relevance to Club Licenses, these policies and purposes include, namely, “to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State” and “to foster moderation and responsibility in the use and consumption of alcoholic beverages.” N.J.S.A. 33:1-3.1(b)(1) and (2).

An applicant for a Club License who does not meet the three-year requirement of exclusive possession and use of a clubhouse in N.J.A.C. 13:2-8.4 may apply to the Director of the Division for relaxation of this regulatory requirement upon a showing of “special cause.” *See* N.J.A.C.

13:2-8.5(b). The applicant may also apply to the Director for relaxation of N.J.A.C. 13:2-8.4 if the club is a chapter of a state organization that has been in active operation for at least three years continuously immediately prior to submission of the license application. *See* N.J.A.C. 13:2-8.5(a). The Division uses its general relaxation standard in N.J.A.C. 13:2-9.1 in determining whether the special cause standard has been satisfied.

N.J.A.C. 13:2-9.1 provides:

The rules may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.

A. **Application of N.J.A.C. 13:2-9.1 to the Ocean County Order of the Friendly Sons of the Shillelagh's Club Waiver Application.**

Based on the Division's review of the Friendly Sons of the Shillelagh's submissions, the Division finds that the Club has demonstrated that a denial of its application would cause a social hardship and inconvenience to its members and their guests. Granting this relaxation request will allow the members and their guests to enjoy an alcoholic beverage during the Club's gatherings and events, similar to what the members and guests of the currently licensed parent chapter in Old Bridge enjoy.

Second, granting this relaxation will not unduly burden any affected parties. The Club will provide a service to its members and their guests, and will not be open to the public. Therefore, the Club will have very little, or no, impact on retail consumption licensees in the area because these licensees are not in competition with the Club.

Finally, granting the relief sought is not inconsistent with the underlying purposes of Title 33 and the implementing regulations. A Club License at this location will allow the members and

their guests to enjoy an alcoholic beverage at organized social events and activities held at the new location. This privilege will enhance the club experience for the members and their guests, and does not appear to undermine the fundamental principles set forth in Title 33.

Further, based on the Division's review of the Friendly Sons of the Shillelagh's submissions and representations, the Division finds that the Club is a *bona fide* Club as defined by N.J.S.A. 33:1-12(5) and N.J.A.C. 13:2-8.1. Additionally, the Division finds that the Club has 1) established special cause in accordance with the requirements of N.J.A.C. 13:2-9.1, and 2) has satisfactorily demonstrated that it is a duly enfranchised chapter of a state organization that has been both in active operation in this State for at least three years continuously immediately prior to the license application submission and in possession of suitable premises. N.J.A.C. 13:2-8.5(a). In fact, the parent organization has been in existence since 1964 at its location in Old Bridge, New Jersey, and has held an alcoholic beverage license since July 1, 1968. Thus, the Division finds that relaxation of the provision in N.J.A.C. 13:2-8.4 under the circumstances described herein is warranted.

III. Conclusion.

Based on the foregoing, the Division grants the Friendly Sons of the Shillelagh's club license waiver request of provision N.J.A.C. 13:2-8.4. The issuing authority is authorized to consider the Friendly Sons of the Shillelagh's Club License application for a new Club License for the 2021-2022 license term.³ The issuing authority may consider granting or denying said application in a reasonable exercise of its discretion. Additionally, please be advised that the

³ Pursuant to N.J.A.C. 13:2-4.9, "If the application for a new license is granted, except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18, the license fee shall be prorated from the effective date of the license and where the amount deposited exceeds the prorated license fee, the applicant shall be entitled to a refund of the excess."

Township of Stafford must conduct a background check investigation of the Club's application and determine the qualifications of Officers and Members under N.J.A.C. 13:2-8.6.

Please be further advised that this relief granted by the Director is based upon the representations and submissions as set forth in the Petitioner's *ex parte* letters. The relief granted is subject to review and/or modification should the factual circumstances warrant.



JAMES B. GRAZIANO
DIRECTOR

DATED: February 25, 2022
JBG/ABC