

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

AUSTIN KNOOB dba Saluki Bar/Levels
Premises Located at:
760 East Grand Ave, Carbondale, IL
Appellant,
vs.
CARBONDALE, IL
Appellee.

Case No.: 20APP23

License Number: 1A-1128450

ORDER

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the Commission”) upon the appeal of AUSTIN KNOOB dba Saluki Bar/Levels, Appellant, (hereinafter “Appellant”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

Appellant is the holder of local liquor license issued by the City of Carbondale, Illinois, local license number B2-10G, for the property located at 760 East Grand Ave, Carbondale, IL. Appellant is the holder of a Retailer license issued by the Commission, license number 1A-1128450. On or about September 28, 2020, the Carbondale City Attorney filed a Citation and Notice of Hearing in local case number 2020-10, alleging Appellant engaged in conduct which violated the Carbondale Revised Code in relation to the sale and service of alcohol. A hearing was held before Hearing Officer Brad Olson on behalf of the Carbondale Local Liquor Control Commission on October 20, 2020. On November 10, 2020, Hearing Officer Olson issued a report and recommendation to the Carbondale Local Liquor Control Commission. On December 7, 2020, the Carbondale Local Liquor Commission (hereinafter “Appellee”) entered an order revoking the local liquor license for Appellant. On December 24, 2020, Appellant filed its appeal with the Commission of the final decision of the Appellee. The matter was continued on multiple occasions. A hearing was held before the Commission on March 23, 2021. Chairman Cynthia Berg and Commissioner Melody Spann-Cooper presided over the hearing. Appellant was

represented by attorneys Sean O’Leary and Michael Wepsiec¹. Appellee was represented by Analisa Parker. The Commission deliberated the matter on April 21, 2021.

Discussion

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the Commission. 235 ILCS 5/7-9. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an “On the Record” review of the official record of proceedings before the Local Liquor Commission. Id. The Commission may only review the evidence found in the official record. Id. The City of Carbondale has adopted as part of the Carbondale Revised Code an ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. CRC §2-2-3(1) and (J). Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record. 235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission’s duty is to determine whether local agency abused its discretion. Koehler v. Illinois Liquor Control Comm'n, 405 Ill. App. 3d 1071, 1080, (2010). “Such review mandated assessment of the discretion used by the local authority, stating that “[t]he functions of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion. Id.”

¹ Appellant was originally represented in this matter by attorney Alfred E. Sanders Jr. Mr. Sanders unexpectedly died on February 13, 2021, after the matter was already set for hearing before the Commission. Appellant was given the opportunity to postpone the hearing but opted to proceed as scheduled with new counsel.

A. Whether the local liquor control commissioner has proceeded in the manner provided by law.

In reviewing the actions of a local liquor commission, the Commission must review whether the local liquor commission appropriate process in arriving at its decision. Upon a review of the record in this case, we find that the Appellee did follow the appropriate procedure and processes. Appellant raises several issues on appeal:

i. Necessity of a Court Reporter and Completeness of the Record

The official record of proceedings in this case should have contained a common law record and a transcript of the proceedings. The common law record includes pleadings, documents, exhibits, and orders entered in the case. Two hearings were held in this case. The evidentiary hearing held before Hearing Officer Olson on October 20, 2020 and a sentencing hearing before the Carbondale Local Liquor Control Commission on November 24, 2020. Appellee was unable to produce a complete transcript for the October 20, 2020 evidentiary hearing. Appellee admits that an error occurred during the recording of the hearing. Appellee was able to produce a transcript made from a recording of the November 24, 2020 hearing before the Carbondale Local Liquor Commission.

In this context, Appellant raises two areas of concern. First, Appellant raises the concern that Appellee has not proceeded in the manner provided by law in that Appellee did not present this Commission with an official record taken and prepared by a certified shorthand reporter. Appellee admits that it did not utilize the services of a court reporter at the hearings. Second, Appellant raises the concern that even if the Commission were to accept transcripts made from a recording, no record exists at all of the September 30, 2020 evidentiary hearing. Both of Appellant's arguments are rooted in Appellant's interpretation of Section 7-9 of the Liquor Control Act. 235 ILCS 5/7-9. Section 7-9 states in pertinent part: "If such resolution is adopted, a certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter..." Appellant contends that the transcript must be prepared by a certified shorthand reporter prepared in a contemporaneous manner and therefore the Commission should be barred from reviewing the decision and the only outcome should be a reversal of the local liquor commission's decision.

The City of Carbondale has adopted as part of the Carbondale Revised Code an ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the

official record. CRC §2-2-3(1) and (J). The Commission acknowledges that a court reporter was not present to take a contemporaneous transcription of either hearing. A recording was made of the second hearing. Following the filing of this appeal, a court reporter subsequently transcribed the hearing and prepared the transcript for which the Commission could review. A transcription of the record was made available to the Commission.

The fact that an incomplete transcript exists for the October 20, 2020 evidentiary hearing is harmless error. As previously mentioned, the record is not only the transcript of the hearings. It also includes the pleadings, exhibits, and orders. The case is primarily based on legal arguments which have been documented through motion practice. The underlying factual events are not at issue. Although a complete transcript of the hearing would have been preferable, there is sufficient information contained in the record to arrive at a conclusion. Therefore, the lack of transcript is harmless error.

In fact, this Commission and the Illinois Appellate court has already dealt with this issue. In Carbondale, Ill., Local Liquor Control Comm'n v. Illinois Liquor Control Comm'n, 84 Ill. App. 3d 325, 405 N.E.2d 433 (1980), the Commission reviewed an order issued by the Local Liquor Commissioner for the City of Carbondale, IL which lacked a transcript or record of proceeding. The Commission determined that since no transcript existed a de novo hearing should be held. The Appellate Court affirmed this decision. However, that Carbondale case differs from the present case for two reasons. In the Carbondale case from 1980, the Liquor Control Act included an option to hold a De Novo review when the record was not kept. That language has been removed from the Liquor Control Act. As such, the only remedy in this matter would be reversal of the order and not a De Novo hearing before the Commission. In the Carbondale case from 1980 no record was kept in any form. In this case, the Appellee recorded the hearing, ordered a transcript prepared by a certified shorthand reporter, and has complied with the record requirement.

Additionally, this Commission has recently ruled on this specific issue in the case of Stretch's Bar and Grill Corporation v. Waukegan, 19CA02 (November 13, 2020). In Stretch's as here, no contemporaneous transcript was taken, however, a transcript was prepared from the recording for this Commission to review and we ruled that this transcript satisfied the official record of proceedings requirement.

Accordingly, the Commission finds that Appellee complied with the “On the Record” requirement and the record presented is sufficient to conduct a review.

ii. Timeliness of Filing the Record

Appellant argues that Section 7-9 of the Liquor Control Act requires the local liquor commission to file the official record of proceedings within five days of the filing of the appeal. Appellant contends that the Commission should reverse the decision of Appellee because Appellee did not timely file the official record of proceedings.

Appellant’s contentions are baseless. There is no denying that Appellee did not file the official record of the proceedings within five days. However, Appellee seems to ignore what immediately follows in the Liquor Control Act and the Illinois Administrative Code. Section 7-9 of the Liquor Control Act states in pertinent part:

...a certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter shall be filed by the local liquor control commissioner within **5 days after notice of the filing of such appeal, if the appellant licensee pays for the cost of the transcript.” 235 ILCS 5/7-9. (emphasis added).**

Furthermore, the Illinois Administrative code states in pertinent part:

(b) In all cases where an appeal is to be heard upon the record, a certified official record of the proceedings taken and prepared by a certified court reporter, along with all exhibits, shall be filed by the local liquor control commissioner within 5 days after notice of the filing of the appeal, if the appellant licensee pays for the transcript and five additional copies. The failure to file the certified official record of the proceedings before the local liquor control commissioner, **without sufficient written explanation**, shall result in the appeal not being docketed for hearing, as originally scheduled, or as continued by the Commission.

(h) The inability of any party to comply with the foregoing requirements shall be detailed in written communication to the Commission. 11 Ill. Admin. Code. 100.350. (emphasis added)

Additionally, the Carbondale Revised Code requires that the licensee pay for the transcript upon filing of an appeal. CRC §2-2-3(1)

Both Appellant and Appellee admit to having engaged in extensive dialogue regarding the official record including payment for that record. This dialogue relieves Appellee of the requirement to submit the record within the required five days. Appellee must be satisfied that it has received full payment for the record.

Furthermore, the Administrative Code provides the Commission with the latitude to deviate from the proscribed deadlines as it deems appropriate. Appellee provided the Commission with an explanation as to the delay. The Commission received a copy of the official record within the time it deemed appropriate. Therefore, the timeliness is not a basis to reverse the decision of Appellee.

iii. Structure of the Carbondale Local Liquor Commission

Appellant raises concerns that the structure of the Carbondale Local Liquor Control Commission violates the Carbondale form of government. The essence of Appellant's argument is that Carbondale is a home rule community which operates under a managerial form of government pursuant to 65 ILCS 5/3-6. As a managerial form of government, the city council's powers are limited to legislative powers and do not involve administrative duties as well.

The Liquor Control Act places the authority to serve as the local liquor commissioner in the hands of the mayor of each city. 235 ILCS 4-2. However, the Liquor Control Act does not limit the ability to serve as the local liquor commissioner to the mayor. The Liquor Control Act expressly contemplates the appointment of others as a local liquor control commission. Section 4-6 of the Liquor Control Act states: "When, in this Act, the local liquor control commissioner shall be referred to, it shall include any committee or other agency appointed by such local liquor control commissioner." 235 ILCS 5/4-6. As such, there is no problem if a separate committee is formed to serve as the local liquor regulatory authority. The Carbondale Revised Code created the Carbondale Local Liquor Control Commission. The Commission is made up of the mayor and those City Council members who have not applied for or hold a Class A local liquor license. CRC §2-2-1. Appellant argues that since there is an overlap between the local liquor commission and the City Council, this violates the managerial form of government and therefore, the local liquor control commission has no authority.

Appellant's contentions are beyond the scope of the authority of this Commission to review. An administrative agency is limited to the powers granted to it by the legislature, and any actions it takes must be authorized by statute. *Vuagniaux v. Department of Professional*

Regulation, 208 Ill.2d 173, 186, 280 Ill.Dec. 635, 802 N.E.2d 1156 (2003). An agency “has no general or common law authority.” *Vuagniaux*, 208 Ill.2d at 186, 280 Ill.Dec. 635, 802 N.E.2d 1156. “Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created. The agency's authority must either arise from the express language of the statute or ‘devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.’ ” *Vuagniaux*, 208 Ill.2d at 187–88, 280 Ill.Dec. 635, 802 N.E.2d 1156 (quoting *Schalz v. McHenry County Sheriff's Department Merit Comm'n*, 113 Ill.2d 198, 202–03, 100 Ill.Dec. 553, 497 N.E.2d 731 (1986)). “The issue of an administrative body's authority presents a question of law and not a question of fact. The determination of the scope of the agency's power and authority is a judicial function and is not a question to be finally determined by the agency itself.” *County of Knox ex rel. Masterson v. The Highlands, L.L.C.*, 188 Ill.2d 546, 554, 243 Ill.Dec. 224, 723 N.E.2d 256 (1999).

Furthermore, a municipal enactment, adopted under statutory authority, enjoys a presumption of validity. *City of Decatur v. Chasteen*, 19 Ill.2d 204, 210, 166 N.E.2d 29 (1960). Nevertheless, the due process clause prohibits the arbitrary, unreasonable, and improper use of municipal power. *City of Decatur*, 19 Ill.2d at 210, 166 N.E.2d 29. Thus, to overcome the presumption of validity, the party challenging the municipal enactment must show by clear and affirmative evidence that the ordinance is arbitrary, capricious, or unreasonable; that there is no permissible interpretation of the enactment that justifies its adoption; or that the enactment will not promote the safety and general welfare of the public. *City of Decatur*, 19 Ill.2d at 210, 166 N.E.2d 29. Stated conversely, every municipal enactment must be free from the constitutional infirmities described above. Thus, a municipality's duty to act in the public interest derives not from a legislative pronouncement but from the due process clause of the constitution itself. See *City of Decatur*, 19 Ill.2d at 210–11, 166 N.E.2d 29.

The Commission may rule on matters which fall within the scope of the Liquor Control Act. However, Appellee is asking the Commission to rule on the validity of an ordinance. A ruling on the validity of an ordinance falls outside of the scope of the Liquor Control Act. Accordingly, we must presume that the ordinance which creates the Carbondale Local Liquor Control Commission is valid.

B. Whether the order is supported by the findings;

In reviewing, whether the order is supported by the findings, this Commission will analyze whether the findings contained within the order constitute grounds to suspend, revoke, or fine the license. Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” Daley v. El Flanboyan Corp., 321 Ill. App. 3d 68, 71, (2001). We take guidance from Administrative Review Law jurisprudence. At this stage we will limit our review to the local liquor commissioner’s order to the factual findings, and whether these findings support the imposed sanctions. Id.

The final order adopts the Hearing Officer’s Report and Recommendation which goes into extensive detail outlining the facts at issue. However, the final order amends the findings by revoking the license instead of the disciplinary action recommended by the Hearing Officer. Accordingly, when viewed on its own the order is supported by the findings.

C. Whether the findings are supported by substantial evidence in the light of the whole record.

Finally, this Commission must review whether the findings are supported by substantial evidence in the light of the whole record. We find that findings are supported by substantial evidence in light of the whole record.

The Illinois Appellate Court has ruled that as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago, 277 Ill. App. 3d 959, 966, (1996). The findings of the local commissioner are presumed to be correct and will not be disturbed unless contrary to the manifest weight of the evidence. Soldano v. State of Ill. Liquor Control Comm'n, 131 Ill. App. 3d 10, 13 (1985). It is the function of the commissioner to determine the credibility of witnesses and the weight accorded their testimony. Id. Additionally, the courts have found that the question of revocation of a liquor license “presents a peculiarly local problem which can be best solved by the respective local commissioners who, because of their proximity to and familiarity with the situation, have greater access to information from which an intelligent determination can be made. That determination should not be disturbed in the absence of a clear

abuse of discretion” Weinstein v. Daley, 85 Ill.App.2d 470, 481–82 (1967). Further the courts have found that, “in cases of this kind, we, and the Circuit Court, and the License Appeal Commission are all required to accept the judgment of the Local Commissioner as to the credibility of the witnesses. It is only he, as the trier of the facts, who is authorized to assess credibility, weigh the evidence, reconcile conflicting evidence, if possible, and, if not possible, determine which witnesses are worthy of belief. Dugan's Bistro, Inc. v. Daley, 56 Ill. App. 3d 463, 470–71 (1977).

On April 6, 2020, the Carbondale City Council declared a civil emergency as a result of the COVID-19 pandemic. In response to that emergency the Mayor of the City of Carbondale issued Executive Order 2020-04 on June 2, 2020 which among other things required all beer gardens to cease operating at 10:00 PM. Appellant was charged with four counts of knowingly refusing to close by 10:00 PM on June 5, 2020, June 6, 2020, June 7, 2020, and June 8, 2020 as required by Carbondale Executive Order 2020-04 and in violation of Section 2-5-3(D) of the Carbondale Revised Code. The parties stipulated during the hearing to the fact that on all four days in question that Appellant’s business was open past 10:00 PM. Evidentiary Hearing Transcript at 1. The only issues presented during the hearing were ones of law. Namely, whether the Mayor had the authority to act by executive order to modify the approved hours of operations for beer gardens and whether a violation of an executive order constituted an ordinance violation for the purposes of disciplining a liquor license. The matter was extensively briefed by the parties.

Following the submission of briefs, the Hearing Officer issued a Report and Recommendation to the Carbondale Local Liquor Commission. The Hearing Officer issued a finding that there is a presumption that the Executive Order was valid. The Hearing Officer further interpreted the meaning of ordinance as found within the Carbondale Revised Code to include an executive order. The Hearing Officer recommended a 14-day suspension to run concurrent with the recommendation found in case 2020-04 and additional \$1,500 fine.

On November 24, 2020, the Carbondale Liquor Control Commission heard further testimony and arguments. It then deliberated the matter. The final order entered adopted the findings of fact and conclusions of the Hearing Officer but modified the discipline to a revocation (matching the revocation entered against Appellant in two previous orders).

Although Appellee utilizes the services of a Hearing Officer to conduct the evidentiary hearings, the decision of the Hearing Officer is not the final decision. In multiple sections within the Carbondale Revised Code, the decision of the hearing officer can be relied upon to close a case without submitting the order to the Carbondale Local Liquor Commission. CRC 2-2-3(C) and (E). The Carbondale Revised Code places the ultimate decision-making authority in the Local Liquor Commission. CRC 2-2-3(F). The Carbondale Local Liquor Commission is free to reject the findings and recommendations made by the Hearing Officer.

Appellant argues that the Mayor did not have the authority to modify the hours of operation for liquor licenses by executive order and that even if he did have such authority, violating the executive order would not constitute grounds to discipline a license.

Appellant's contentions are beyond the scope of the authority of this Commission to review. As previously discussed regarding Appellant's contentions that the Carbondale Liquor Control Commission is not properly constituted, it is beyond the scope of the Commission to determine if the Executive Order alleged to have been violated was a valid execution of authority by the Mayor of the City of Carbondale. Accordingly, we must presume that it is a valid.

The Hearing Officer found, and we agree that the plain meaning of ordinance includes any local, State, or Federal authority including executive action taken by the Mayor. Additionally, as previously discussed, an ordinance or statute must be construed so it does not result in an absurd outcome. If we accepted Appellant's argument, there would be no repercussion for violating an executive order issued by the Mayor during a time of civil emergency.

In this matter, Appellee is the finder of fact. Appellee had the opportunity to review the evidence and weigh the credibility of the testimony and the arguments presented. The underlying violation is a simple violation: Did Appellant continue to operate despite the fact that it had been ordered by executive order to cease operations? The answer to that question is undeniably, yes. The local liquor commission understands its community and it is not in the Commission's authority, absent an abuse of discretion, to upset that decision. Accordingly, we find that the findings are supported by substantial evidence in light of the whole record.

Accordingly, we find that the findings of fact are supported by substantial evidence in the light of the whole record.

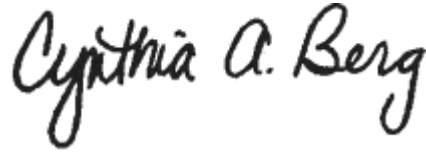
IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Carbondale Local Liquor Commission revoking the B2-10G local liquor license for AUSTIN KNOOB dba Saluki Bar/Levels, located at 760 East Grand Ave, Carbondale, IL is affirmed.

Furthermore, pursuant to Section 7-6 of the Liquor Control Act, 235 ILCS 7-6, the State of Illinois Retailer license, number 1A-1128450, issued to for AUSTIN KNOOB dba Saluki Bar/Levels, located at 760 East Grand Ave, Carbondale, IL is hereby REVOKED.

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If no Petition for Rehearing is filed, this order will be considered the final order in this matter. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on May 27, 2021.



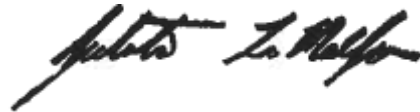
Cynthia Berg, Chairman



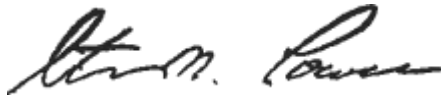
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Donald O'Connell, Commissioner



Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS)
COUNTY OF COOK) 20APP23

UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: May 27, 2021.



Abraham Zisook

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