

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

SAINT MATHEW ENTERPRISE, INC.
d/b/a PS FUELS
928 W. JEFFERSON ST., JOLIET, IL 60435

Illinois Lic. N/A

Appellant,
vs.
JOLIET LIQUOR CONTROL COMMISSION

Appellee.

Case No.: 21 APP 16

FINAL ORDER

FINAL ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the State Commission”) upon the appeal of Saint Mathew Enterprise, Inc., d/b/a PS Fuels, Appellant (hereinafter “PS Fuels”), the State Commission being otherwise fully informed, a majority of its members do hereby state the following:

Procedural History

On or about April 21, 2021, PS Fuels applied for a Joliet Class BG liquor license permitting the off-premises sales of beer and wine and the on-premises consumption of beer and wine in conjunction with video gaming at 928 W. Jefferson Street, Joliet, Illinois. On August 13, 2021, a member of the Joliet Liquor Control Commission (“Joliet Commission”) held a license application hearing. On September 24, 2021, the Joliet Local Liquor Commissioner signed an order denying the application of PS Fuels. On October 5, 2021, the Joliet City Council adopted Council Memo #467-21 to deny PS Fuels’ Class BG liquor license application. The denial order was served on an agent of PS Fuels on October 8, 2021. PS Fuels filed an appeal with the State Commission on October 25, 2021. On February 24, 2022, the State Commission, represented by Chair Cynthia

Berg and Commissioner Thomas Gibbons, heard on the record arguments of counsel on the matter. The State Commission as a whole reviewed the entire record and deliberated on the matter at the April 20, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission AFFIRMS the Joliet Commission decision to deny the issuance of a Class BG liquor license to PS Fuels.

Standard of Review

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 State 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 State Commission may only review the evidence found in the official record. *Id.* Joliet has adopted a local ordinance requiring an appeal from an order of the Joliet Commission to be a review of the official record. *Joliet Liquor Code, Section 4.13(e), ILCC at 33*. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the State 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 the local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2nd Dist. 2010). The Court in that case held that "[s]uch review mandated assessment of the discretion used by the local authority, stating that '[t]he function 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.*

PS Fuels' basis for this appeal is: 1) the Joliet Commission acted arbitrarily in denying PS Fuel's application for a liquor license due to its general aversion to providing liquor licenses to gas stations, and; 2) the factual findings of the Joliet Commission did not support the denial of the liquor license. The State Commission has reviewed the arguments and has determined that the Joliet Commission did not abuse its discretion in denying the application of PS Fuels for a Class BG liquor license.

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

The Joliet Commission acted in a manner provided by law by providing PS Fuels with the minimum due process to seek a liquor license. In reviewing the actions of a local liquor commission, the State Commission must review whether the local liquor commission offered appropriate process in arriving at its decision. Upon a review of the record in this case, the Joliet Commission satisfied the minimum requirements of law in the review and disposition of PS Fuels' liquor license application.

Although the Liquor Control Act does not provide for a process by which a hearing is to occur for an application, the Joliet City Code provides for an application hearing process. The

Code requires a hearing to take place within 30 days of the application. The City Code further requires that the City Council be notified, and that the City Council determine that the issuance of the license is in the best interest of the city. Following the review by the City Council, the Joliet Commissioner is to issue an order consistent with the review conducted by the City Council. *ILCC at 32-33.*

In this case, the Joliet Commission proceeded in the manner provided by law. PS Fuels filed a Class BG liquor license application and Joliet held a hearing on the application on August 13, 2021. *ILCC at 19-28.* Following the hearing, the Joliet Commissioner issued his findings and signed an order denying the PS Fuels Class BG liquor license application. *ILCC at 159-161, 72-74.* On October 5, 2021, the Joliet City Council adopted Council Memo #467-21 to deny the PS Fuels Class BG liquor license application. *ILCC at 13.* The Joliet Commission grounded its decision to deny the liquor license in Sections of the Joliet Code which authorize the Joliet Commission to consider various criteria, including: 1) 4-13(c)(9) - the number, class, and type of licensed premises within a one mile radius of the proposed licensed premises; 2) 4-13(c)(10) - the zoning, general character of the surrounding neighborhood, and the projected impact of the premises upon the surrounding neighborhood and the city as a whole; and, 3) 4-13(c)(11) - the law enforcement problems, if any, which would be created by the opening of the premises. *ILCC at 72-74.* A review of the record demonstrates that the Joliet Commission proceeded in a manner provided by law.

B. Whether the order is supported by the findings

In reviewing whether the order is supported by the findings, this Commission analyzes whether the findings contained within the local order constitute grounds to fine, suspend, or revoke the license. The Illinois Appellate Court has ruled that, as a reviewing body, “[t]he 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 (1st Dist. 1996).

In this case, the order contains sufficient findings of fact and conclusions of law from which to base the ultimate decision. The Joliet Commission issued an order consistent with the findings in the record because the final denial order was sufficiently supported by the findings of the application record. In the order denying the license the Joliet Commissioner issued the following findings: that PS Fuels filed an application for a Class BG license located at 928 W. Jefferson Street, Joliet; the “property consists of a brick structure which is used as a convenience store (proposed premise) which supports the sale of motor fuel from several fuel pumping islands;” the property is “zoned for business, however the surrounding area is a large residential neighborhood;” “a review of licensed premises within a one mile radius reveals that there are 7;” “a review of police department records from the past year reveals that there were 34 calls for police service” at the premises; there was “evidence received which indicated that area residents were opposed to the issuance of the license.” *ILCC at 72-74*. Based on these findings, the Local Commissioner found there was just cause to deny a liquor license to PS Fuels, stating:

The proposed premise (928 W. Jefferson) backs up to a residential area. The proposed premise, as well as its immediate vicinity is the locus of frequent calls for police service. Area residents voiced opposition to the issuance of the license. The issuance of a liquor license at this location will likely have a negative impact on the surrounding neighborhood, as well as the city as a whole. The issuance of a liquor license at this location will likely exacerbate the already existing law enforcement problems. Based on the foregoing Findings of Fact, the Commissioner hereby concludes that there exists just cause to deny the application for the issuance of a liquor license.

ILCC at 74.

The Joliet Code authorizes the Joliet Commissioner to consider a number of factors in determining whether the issuance of a license is in the best interests of the city. *ILCC at 32-33*. In this case the Joliet Commission focused on three factors in denying the liquor license: 1) the number, class, and type of licensed premises within a one mile radius of the proposed licensed premises [4-13(c)(9)]; 2) the zoning, general character of the surrounding neighborhood, and the projected impact of the premises upon the surrounding neighborhood and the city as a whole [4-13(c)(10)]; and, 3) the law enforcement problems, if any, which would be created by issuing the license [4-13(c)(11)]. *ILCC at 72-74*. The findings of the Joliet Commissioner do contain sufficient evidence as to why the issuance of a license to PS Fuels supports a reasonable conclusion that such license would have a negative impact on the community. Therefore, the Order of the Joliet Commission 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. In this case, there is substantial evidence in the record demonstrating that the issuance of the Class BG license to PS Fuels would likely have a negative impact on the surrounding neighborhood and exacerbate already existing law enforcement problems. “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, (1st Dist. 2001). “An administrative agency’s decision is not against the manifest weight of the evidence and must be sustained on judicial review if there is *any* evidence in the record that fairly supports the agency’s decision.” *Id.* (emphasis added).

PS Fuels argues that the “the record and findings of the Joliet Liquor Commission do not support denial of the license” and notes that the Applicant: “had been associated with the sale of alcoholic beverages for over sixteen years;” “was of good character;” and, “owed no money to the City.” *ILCC at 181-182*. In addition, Citgo notes that both the Building Department and the Chief of Police did not object and the premises are zoned as B-1 Neighborhood Business District. *ILCC at 182*.

The Joliet Commissioner Order indicated that “[t]he proposed premise (928 W. Jefferson) backs up to a residential area.” *ILCC at 74*. Testimony and documentary evidence from the hearing clearly show this to be the case. Keith Kotowicz testified that he resides at 9 Salem Drive, which is “directly behind the PS Fuel Station. *ILCC at 23*. Joliet Planning Division maps entered into evidence at the hearing further support the finding that there is an R-2 single-family residential district directly south of PS Fuels. *ILCC at 70-71*.

The Joliet Commission also found that “the proposed premise, as well as its immediate vicinity is the locus of frequent calls for police service” and “[t]he issuance of a liquor license at this location will likely exacerbate the already existing law enforcement problems.” *ILCC at 74*. The record indicates that there were 34 calls for police service at PS Fuels during a one-year period from September 2020 to August 2021. *ILCC at 103–158*. Some of these calls were made by PS Fuels and concerned minor issues such as a dispute over payment by credit card (*ILCC at 108*) or a false alarm (*ILCC at 133*), yet other calls concerned gang activity (*ILCC at 112-113*), fighting and property damage (*ILCC at 117-118*), intoxicated individuals causing disturbances (*ILCC at 125-126, 135-136*), and shots fired (*ILCC at 143-145*).

PS Fuels notes that the Joliet Police Chief, Dawn Malec, did not “foresee any special law enforcement problems associated with the issuance” of the liquor license to PS Fuels. *ILCC at 62*.

It is, however, undisputed that there were 34 calls for police service at PS Fuels over the course of one year. Each of these calls for police service involved from two to seven responding officers. *ILCC at 103-158*. In addition, Keith Kotowicz testified that there are apparent narcotic sales and nuisance activity such as public urination which occurs at the premise of PS Fuels. *ILCC at 23*. Furthermore, Dawn and Ralph Willie, who live ½ block from the premises alleged in an email objecting to the license that “cars leave the gas station...paying no attention to the speed limits, there have been fights and shootings” at PS Fuels. *ILCC at 61*. Therefore, based on the calls for police service and the alleged illegal activity observed by neighbors in the immediate vicinity of PS Fuels it is reasonable for the Local Commissioner to conclude that issuing a liquor license at this location would likely exacerbate existing law enforcement problems, despite the fact that the Police Chief did not object.

The Joliet Commission further found that “[a]rea residents voiced opposition to the issuance of the license. The issuance of a liquor license at this location will likely have a negative impact on the surrounding neighborhood, as well as the city as a whole.” *ILCC at 74*. A number of citizens emailed objections to the Joliet Commission or testified in opposition to the license. As previously noted, Keith Kotowicz testified at the hearing on August 13, 2021, that he opposed the issuance of a license because his residence is directly behind (south) of PS Fuels and he has observed “drug activity” and public urination outside the station. *ILCC at 23*. Rena Schultz, a board member of the Reedwood Neighborhood Association, also spoke at the hearing on behalf of the Association and its residents in opposition to the issuance of the liquor license. *ILCC at 22*. Ms. Schultz expressed concerns that patrons of PS Fuels would drink and then drive through the residential neighborhood south of the location. *ILCC at 23*. Additionally, three individuals emailed their objections to the Joliet Commission expressing similar concerns over patrons of PS

Fuels speeding through the neighborhood, fighting at the premises, and the area already having too many liquor licenses. *ILCC at 59-61*. There is substantial evidence in the record to support the finding that the issuance of a license to PS Fuels would likely have a negative impact on the surrounding neighborhood.

Finally, PS Fuels contends that the comments made by the Joliet Commissioner at the October 4, 2021, City of Joliet “pre-council meeting” demonstrate that the “Liquor Commissioner did not consider any of the evidence presented at the hearing.” *ILCC at 180*. At that meeting the Joliet Commissioner stated:

Just so we are clear, I have said this to a couple of other applicants that have come forward. My office has been consistent. . . . *I have denied all of these licenses, I think they are a bad idea*. It started with Thornton’s at Collins and Jackson Street. We have had other east side establishments and west side establishments want to do it. *It’s not personal, it’s not a reflection of you or your business. It’s just my opinion and the Liquor Commissioner’s opinion that these are bad for Joliet. That’s why I stayed consistent and denied them consistently, just want to let you know.*” (Emphasis added).

(Public Record, October 4, 2021 pre-council meeting; available for viewing at https://joliet.granicus.com/player/clip/4085?view_id=6&redirect=true at 27:50)

While “there is a presumption that administrative decision makers are ‘men of conscience and intellectual discipline’ who are able to objectively and fairly judge each particular case on its own facts and set aside their own personal views, a claimant may show bias or prejudice ‘...if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it.’” *Danko v. Bd. of Trustees of Harvey Pension Bd.*, 240 Ill. App. 3d 633, 641 (1st Dist. 1992). “A claimant must show more than the mere possibility of bias or that the decision maker is familiar with the facts of the case. The claimant must demonstrate that the decision maker is not ‘capable of judging a particular controversy fairly on the basis of its own circumstances.’” *Id.* Furthermore, “a decision

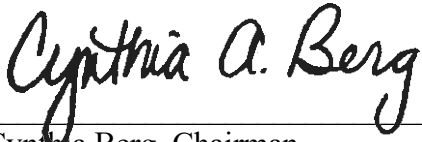
maker is not disqualified ‘simply because he has taken a position, even in public, on a policy issue related to the dispute.’” *Wolin v. Dep’t. of Fin. & Prof’l Regulation*, 2012 IL App (1st Dist.) 112113.

In this case, a disinterested observer could conclude that the Local Commissioner’s remarks at the October 4, 2021, hearing did not show bias or prejudice because the findings are supported by substantial evidence in light of the whole record. Therefore, the local record contains substantial evidence to support the findings.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Joliet Commission is AFFIRMED.

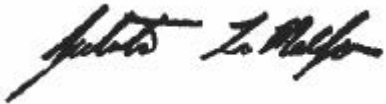
ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on April 20, 2022.



Cynthia Berg, Chairman



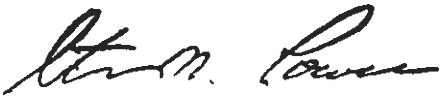
Melody Spann Cooper, Commissioner



Julieta LaMalfa, Commissioner



Thomas Gibbons, Commissioner



Steven Powell, Commissioner



Brian Sullivan, Commissioner

THIS IS A FINAL ORDER

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 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 Petition is a jurisdictional prerequisite to the Administrative Review.

STATE OF ILLINOIS)
COUNTY OF COOK) 21 APP 16

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: June 13, 2022

/s/ Richard Haymaker

Richard Haymaker

Saint Mathew Enterprises, Inc.
c/o James Murphy, Esq.
jmurphy@msclawfirm.org

Local Liquor Commissioner for Joliet, Illinois
c/o Chris Regis, Esq.
cregis@joliet.gov