

**STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
JIMMY'S HOBBY SHOP, LLC)	
20 SOUTH EAST 4TH STREET)	Permit No. RR14-35639
WASHINGTON, IN 47501)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

II.

Jimmy's Hobby Shop, LLC solely owned by James Carrico (Applicant) located at 20 South East 4th Street Washington, Indiana 47501 is an applicant for transfer of a 210 restaurant license from The Tuxedo Bar, Inc. dba the Blind Tiger, solely owned and operated by Rodger Padgett under permit no. RR 14-02529. The application to transfer the license was assigned to the Alcoholic Beverage Board of Daviess County (Local Board). The Daviess Local Board held a hearing on November 7, 2019, and voted 4-0 to deny the transfer of permit no. RR14-02529 to Jimmy's Hobby Shop, LLC. owned by James Carrico. The Indiana Alcohol & Tobacco Commission (Commission) at its regularly held meeting on November 19, 2019 voted to uphold the Daviess County Local Board's recommendation to deny the application to transfer and entered a finding and an order consistent with the vote to deny transfer.

On December 3, 2019, the Applicant filed Petitioner's Request for Administrative Review and Request to Appeal Commission's Denial of the Transfer Application. Due to limitations on government services created by the health emergency, this matter was delayed in process and on July 1, 2020 was assigned to the Commission Hearing Judge and Chairman

David Cook (“Hearing Judge”). The matter was set for hearing on August 13, 2020, and at that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Judge also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at issue, the Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. PROCEDURAL HISTORY

1. On November 23, 2019, the Applicant received the Notice of Denial stating that the Commission rejected its transfer application.

2. On December 3, 2019, the Applicant timely filed his request for administrative review and request for appeal all within the fifteen (15) day deadline required by 905 IAC 1-36-2.

3. The matter was set for appeal hearing to be heard on January 29, 2020.

4. On January 28, 2020 the Applicant filed his Motion to Vacate (appeal hearing) and Motion to Set for Pre-Hearing Conference. Said motion was granted and a pre-hearing conference was scheduled for the same date and time as the originally scheduled appeal hearing.

5. On January 29, 2020 a Pre-Hearing conference was held and this matter was rescheduled for appeal hearing on March 16, 2020.

6. Due to the public health emergency the March 16, 2020 appeal hearing was not held and not rescheduled.

7. On June 13, 2020 the matter was rescheduled for an appeal hearing on August 13, 2020.

8. On July 1, 2020 Chairman David Cook accepted responsibility as the Hearing Judge on this matter.

9. At its regularly scheduled meeting on July 7, 2020 the commission entered an order that the permit no. RR14-02529, the subject of the transfer application in this cause, would not revert to the commission until the resolution of the appeal pending under this cause. Said order was entered to alleviate expiration date issues that existed with the transferred permit.

10. Thereafter on July 24, 2020 a Pre-Hearing conference was held and the matter was confirmed for an appeal hearing on August 13, 2020.

11. No remonstrators filed a petition for intervention as remonstrator, as required by 905 IAC 1-36-2.

12. On August 3, 2020 petitioner filed his list of witnesses.

13. On August 13, 2020 a virtual Micro Soft Teams Meeting appeal hearing was held, witnesses were sworn, testimony taken and evidence admitted. There were no remonstrators at the local board or the appeal hearings and at the conclusion of the petitioner's presentation of evidence and arguments, the matter was taken under advisement.

III. EVIDENCE BEFORE THE LOCAL BOARD

A. The following individuals testified before the Local Board in favor of the Applicant in this cause:

1. James Carrico, Jr. sole member of Jimmy Hobby Shop, LLC.

B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

1. No documentary evidence was submitted

C. The following individuals testified before the Local Board against the Applicant in this cause:

1. No remonstrators appeared to testify against the transfer.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. No documents were officially admitted and made part of the record as numbered exhibits at the Local Board hearing, however, the applicant was questioned about and the Local Board referenced and considered the following documents;
 - a. Indiana Gaming Commission Supplemental Report evidencing a 2017-2018 investigation into illegal gaming operations by Rodger Padgett and the alleged connection between Applicant and Padgett. Said report contained information of telephone calls and text messages between Carrico and Padgett.
 - b. Indiana State Excise Police report of violation against the Tuxedo Bar, Inc under EX19-012701.
 - c. An unsigned Affidavit for Probable Cause titled State of Indiana vs. Rodger Padgett, no cause number.
 - d. Indiana State Police Criminal History Transcript for James Carrico.

IV. EVIDENCE BEFORE THE COMMISSION AT APPEAL HEARING

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. Davey Neal, Attorney for Jimmy's Hobby Shop, LLC. Mr. Neal made opening and closing remarks on behalf of his client, Jimmy's Hobby Shop, LLC. He presented the testimony of James Carrico and admitted support letters on behalf of James Carrico.
 2. James Carrico, sole member of Jimmy's Hobby Shop, LLC. Mr Carrico testified at both the Local Board and Appeal hearings.

At Local Board Hearing – Mr. Carrico identified himself as the potential transferee of the permit no. RR14-02529 presently held by Rodger Padgett owner of Tuxedo Bar. He admitted to being friends with Padgett and helping him from time to time at the Tuxedo by bartending. When questioned about

Padgett's involvement in Carrico's business were he to be granted the transfer he indicated that Padgett would be a manger for a while to help him learn the business. He listed himself rather than Rodger Padgett as manager on the transfer application. He eventual wanted to turn it over to his son to "learn the business".

Mr. Carrico denied any involvement in or knowledge of illegal gambling and booking operation going on at the Tuxedo by Padgett and others. When questioned about the 109 telephone calls and 85 text messages between the phone identified as being owned by Carrico and Padgett over the 110 day period of the gaming investigation he said they were friends. When specifically asked about the calls from his phone to Padgett that can reasonably be identified as placing bets on the NCAA basketball tournament, he responded by saying he didn't know about those calls and "does not gamble". Further, upon further questioning on whether he placed bets he denied ever placing bets (Local Board Transcript page 7, lines 170 -175 and page 8, lines 176-178)

Mr. Carrico admitted, when asked, to having a misdemeanor conviction for DUI approximately two (2) years prior. He was not asked anything pertaining to misrepresentations he made on the transfer application relating to his criminal history.

At the Appeal Hearing Mr. Carrico identified the identity of and their relation to him of those persons who submitted letters on his behalf. He indicated that

he would not have Rodger Padgett as his manager and at the Local Board hearing he meant that Padgett would just help him in transition,

He testified that he was taken by surprise by the board's questions relating to Padgett's illegal booking operation and his possible involvement. He was not given an opportunity to review any of the gaming commission reports he was questioned over. He said those questions "rattled him" and he felt like he was on trial. He offered non incriminating explanations about some of the text messages but as to the text calls evidencing the placing of bets he, in contradiction to his Local Board testimony on the same topic, admitted he placed those bets for other people not for himself. When confronted with the Transfer Application where he checked the "no" box in response to whether he had been convicted of felony or misdemeanor (ATC File) he said he had assistance in preparing the application and even though he attested under oath that all entries were true and accurate, he signed it without reading it. When questioned about the impression he left with the Local Board that he did not know about or participate in the illegal gambling at the Tuxedo Bar when he had, at the least, placed bets for others, he did was not responsive to the question (Appeal Hearing).

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

1. Exhibit A1 - Support letter from Jody Johnson, close family friend.
2. Exhibit A2 - Support letter Jerry Johnson, his mother's former boyfriend.
3. Exhibit A3 - Support letter from Beth Eskew, a friend.

4. Exhibit A4 - Support letter John Clarke, a childhood friend.
5. Exhibit A5 - Support letter from Gary Chestnut, his cousin.
6. Exhibit A6 - Support letter from Mitch Drew longtime friend.
7. Exhibit A7 – Support letter Christopher Brown, longtime friend.
8. Exhibit A8 - Support letter Ali Goodwin, family friend.

C. The following individuals testified before the Commission against the Applicant in this cause:

No persons appeared and testified against the transfer application at the appeal hearing.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

None.

E. The following post-hearing submission and evidence were received by the Commission via U.S. mail:

1. The Applicant's Proposed Findings of Fact and Conclusions of Law.

V. FINDINGS OF FACT

1. The Applicant, James Carrico, sole member of Jimmy's Hobby Shop LLC, is the applicant seeking a transfer of permit no. RR 14-02529, a 210 restaurant permit presently held by Rodger Padgett, dba The Tuxedo Bar. (Local Board Hearing).

2. Rodger Padgett has been charged with and convicted of two Level 6 felonies for illegal booking through the Tuxedo Bar. (Local Board Hearing).

3. The Applicant and Rodger Padgett are long-time friends and regularly communicated via cell phone calls and text messages. Carrico was a frequent patron of the Tuxedo Bar and occasionally helped behind the bar (Local Board Hearing)

4. The Applicant testified in front of the Local Board and under oath that he was unaware of Padgett's illegal gambling operation, did not participate and personally does not gamble. (Local Board Hearing; ATC Hearing).

5. The Applicant testified to the Local Board when questioned about the text messages from his phone to Padgett's phone; "50 Clemson", "20 Syracuse", 20 on 4 team money line parlay Loy-Chi, Michigan, Villanova and Kansas" that he did not know about those messages, he did not place bets and he did not gamble. (Local Board). When questioned by the Hearing Judge at the Appeal hearing on the same topic the Applicant admitted that he placed those bets for other people. (Appeal Hearing).

6. The Applicant indicated on his application for Transfer that he was going to be the manager of the transferred permit location but testified in front of the Local Board that Rodger Padgett was going to be the manager. (Application for Transfer, Local board Hearing). At the Appeal Hearing the Applicant indicated that Rodger Padgett would not be involved in the ownership or operation of the transferred permit.

7. The Applicant testified in front of the Local Board that he did have a conviction for misdemeanor DUI (Local Board Hearing). At the Appeal hearing the Applicant was confronted with the Application to Transfer pages 3 of 6 where he indicated he did not have a conviction for a felony or a misdemeanor and page 6 of 6 where he affirmed by his signature the following in pertinent part;

"I certify that this application was completed by myself or the preparer identified herein, I certify that have read this completed document and that all information provided herein and on any attachment is true and accurate. **I UNDERSTAND THAT IT IS A FELONY TO MISREPRESENT OR FALSIFY ANY PORTION OF THIS APPLICATON OR ATTACHED DOCUMENTS.**"

8. The Hearing Judge acknowledges this could easily be dismissed as a

scrivener's error and, in and of itself, this fact alone does not support a finding of lack of high and fine reputation or bad moral character. However, the fact remains that it is the obligation and duty of the applicant to ensure that the information submitted on his behalf is true and accurate. He certifies that he has reviewed the application and the entries in it are true. The Hearing Judge finds this fact to be instructive and relevant as to the applicant's character determination. When questioned about it at the appeal hearing he testified that "he doesn't know, he just signed it without reading it" (Appeal hearing)

In applying 905 IAC 1-27-1, the Local Board found that the applicant was not of good moral character and lacked a high and fine reputation in that he was evasive and not truthful with the commission regarding his knowledge of and participation in Padgett's illegal gambling activities. The applicant argues that the Local Board denied the transfer to Carrico based on the illegal activity of and the questionable character of Rodger Padgett stemming from his Padgett's long-term illegal gambling operation. Further, applicant argues the Local Board inappropriately and unfairly denied the transfer application based on applicant's close association with Padgett and through "guilt by association" found Applicant's moral character unfit for holding an alcohol permit.

The Hearing Judge finds that while there was intense questioning about applicant's association with Padgett and his participation in and knowledge of the illegal gambling operation run by Padgett, the Local Board's finding of no high and fine reputation was based on applicant's evasive demeanor and untruthful responses to the Local Board's questions and not because of his association with Rodger Padgett, (Local Board Hearing pages 11 & 12, Lines 258 through 298).

Applicant also argues that since the Local Board subsequently approved Rodger Padgett's application for renewal by a 2-1 vote, that this should automatically inure to the benefit of the applicant in this appeal. The Hearing Judge finds applicant's appearance and conduct in front of the Local Board is independent of Rodger Padgett's appearance and conduct before the same board. Further, The Hearing Judges finds that Rodger Padgett was convicted of offenses that would not disqualify him from holding an alcohol permit and that substantive good moral evidence was presented on his behalf at the Local board consideration of his renewal application. While the Hearing Judge may not agree with the Local Board's determination of good moral character of Rodger Padgett, the issue for the commission in ruling on the Local Boards 2-1 recommendation to renew the license in the Padgett hearing was whether there were violations of I.C.7.1-3-19-11 sufficient to overturn the local board recommendation to renew. The commission found there was not. Finally, the Hearing Judge finds that the Local Board's determination of Applicant's moral character was based on his evasive and untruthful conduct before the Davies County Local Alcohol Board and not because he had a long-term associations with Rodger Padgett..

9. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.

2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-1 and I.C.7.1-3-24.

3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).
6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).
7. The 4-0 vote does constitute a recommendation of the Local Board. Ind. Code § 7.1-2-4-16; Ind. Code § 7.1-3-19-11. The Commission shall follow the recommendation of a majority of the members of a local board.... unless, after the commission review of the recommendation, the commission determines that to follow the recommendation would be; (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) contrary to a constitutional right, power, privilege, or immunity; (3) In excess of, or contrary to, statutory jurisdiction, authority limitations or rights; (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence, *See* Ind. Code § 7.1-3-19-11;
8. The Applicant is not a fit and proper applicant, under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.

9. Indiana law charges the Commission with ensuring that laws and regulations are enforced uniformly throughout the state. Ind. Constitution, Art. IV, Sec. 23; *See, Indiana Alcoholic Beverage Commission v. Osco Drug*, 431 N.E.2d 823, 830 (Ind. App. 1982).

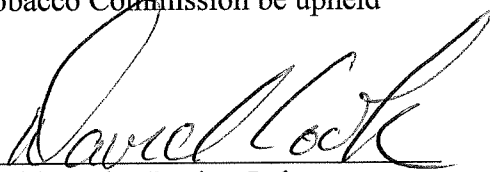
10. The recommendation of the Local Board was based on substantial evidence. (Local Board Hearing; ATC Hearing).

11. The Commission may reverse a local board's action in denying an application for a permit if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

12. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE FOR THE FOREGOING REASONS IT IS THE RECOMMENDATION OF THE HEARING JUDGE that the denial of the transfer by the Daviess County Local Board and the adoption of that denial by the Indiana Alcohol & Tobacco Commission be upheld

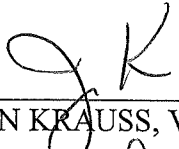
DATE: November 11, 2020


David Cook, Hearing Judge

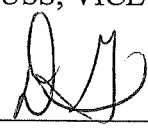
CERTIFICATE OF SERVICE

Approved this 1st day of December, 2020.


DAVID COOK, CHAIRMAN



JOHN KRAUSS, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER