

STATE OF INDIANA

BEFORE THE ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)
THE PERMIT OF)
M T M SERVICES INC DBA PORTER'S TAP) PERMIT NO. RR45-03852
6405 KENNEDY AVBENUE) EX # 21-012997
HAMMOND, INDIANA 46323)
Permittee.)

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

M T M services Inc., 6504 Kennedy Ave., Hammond, IN (Permittee), permit number RR 45 – 03852 is a permit for a beer, wine and liquor restaurant in an incorporated city, also known as a type 210 permit. The Permittee has conducted business for a significant period time with that permit at its current location, operating as Porter's Tap. In November, 2021 a complaint was received by the Indiana State Excise Police that Permittee was conducting business after closing hours of 3:00 AM. While conducting an investigation in December 2021 two officers observed patrons going in and out of the business after the closing hours of 3:00 AM and conducted a further investigation. As a result of that investigation, the officers issued the Permittee a Notice of Violation (EX-21-012997) for times when consumption is unlawful and for failure to clear bar service. The matter was set for a hearing on the violation on August 9, 2022.

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 full Indiana Alcohol and Tobacco Commission for its consideration.

- 1. Evidence before hearing judge**
 - a. The following individuals testified before the Hearing Judge regarding the violation:**
 - 1. Ofc. Brett Painter**
 - 2. Ofc. Jason Szemes**
 - b. The following individuals testified before the Hearing judge on behalf of the Permittee:**
 - 1. Sarah Martin- manager/bartender**
 - 2. Isaac Agar- employee**
 - 3. Maria Molson- owner and permit holder**
 - c. There were no documents or exhibits submitted for the hearing on the violations cited.**

FINDINGS OF FACT

- 1. M T M services Inc. d/b/a Porter's Tap (Permittee) is doing business at 6405 Kennedy Ave., Hammond, IN under Permit # RR45-03852 with a beer, wine and liquor restaurant permit in an incorporated city, a permit commonly known as a 210 permit.**
- 2. Permittee has been conducting its business at that location for a significant period of time.**
- 3. In November 2021 a complaint was received that the business was serving alcohol to intoxicated individuals; that the business was serving alcohol after 3:00 AM, and that many of the servers at the business do not have serving licenses.**
- 4. On December 19, 2021 Indiana state excise police officers Painter and Szemes went to the location of 6405 Kennedy Ave., Hammond, IN to observe the permittee at closing time, at which time they observed a couple of people go in and out of the location after 3:00 AM, with the lights on in the premises.**

5. At approximately 3:35 AM both officers approached the business location which had fogged glass windows and heard the "clinking of glass bottles".
6. After knocking on the windows and a door, and upon admittance to the premises and identifying themselves as Indiana state police excise officers they observed two male individuals in the area – one at the bar seated with a drink in a cup in front of him and the other male seated off to the side.
7. Upon approaching the male sitting at the bar- Isaac- the officers observed a cup which was cold, two thirds of the way full, and filled with an alcoholic beverage identified as a mango habanero.
8. The excise officer testified that he lifted up the drink and felt it was cold and wet and that it had the smell of alcohol.
9. Neither of the males present were at the time identified as employees of the permittee and were, at the hearing, identified as the cleaner and the other as the closer.
10. Sarah Martin indicated she was the bartender and manager since the owner, Maria Molson was not there at the time of the investigation.
11. Sarah Martin indicated that she has been in the alcohol business for years, has had classes and meetings about how to operate a bar and that, on the date in question, she made "last call" at 2:45 AM and made sure that she quit serving at the appropriate time.
12. On the date of the investigation, and after 3:30 AM, there was alcohol being served to an individual who was sitting at the bar and the cup with alcohol in it was on the bar as and after the excise police entered the premises.
13. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

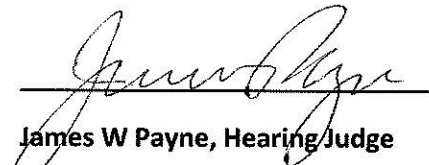
CONCLUSIONS OF LAW

1. The Indiana Alcohol and Tobacco Commission has jurisdiction over this matter pursuant to Ind. Code Sec 7.1-1-2-2 and Ind. Code Sec 7.1—2-3-7
2. The Indiana Alcohol and tobacco Commission has jurisdiction to hear matters of enforcement of its rules and regulations. (Ind. Code Sec 7.1-2-3-7 (4).
3. The Hearing Judge complied with the requirements for a hearing on a permit violation by giving at least five days notice of the hearing (905 IAC 1-37-7).
4. The Hearing Judge conducted the hearing consistent with 905 IAC 1-37-10 and heard evidence consistent with 905 IAC 1-37-11.
5. The closing time for a permittee in the state of Indiana is 3:00 AM.
6. 905 IAC 1-10-2 states: No retailer permittee shall allow the consumption of alcoholic beverages by any person WHATSOEVER on any part of the licensed premises of the permittee for longer than 30 minutes after the legal hour when the sale, dispensing, GIVING AWAY, or otherwise disposing of alcohol beverages shall cease..." Emphasis added.
7. 905 IAC 1-10-1 states : No retailer permittee shall have or allow any container whatsoever, of or for alcoholic beverages, ANYWHERE on the licensed premises open to the public of said permittee (including the counter and/or bar, but not the back bar) for longer than 30 minutes after the legal hour when the sale, dispensing, GIVING AWAY or otherwise disposing of alcohol beverages shall cease..." Emphasis added.
8. While evidence was presented at the violation hearing that the two males present at the time the Indiana State Police Excise officers entered the premises were employees, they were not identified as such and even they should not have had alcohol at that time pursuant to section 7 above.

9. Sections 6 and 7 above clearly state that no alcohol of any kind is to be served to anyone - sold or given away- after the time indicated and that the bar area as set out in section 6 is to be cleared of any alcoholic beverages.
10. The evidence presented at the violation hearing showed by a preponderance of the evidence that alcohol was served and was available on the bar area to a "person" 30 minutes after the legal time for service – 3:00 AM.
11. The Permittee violated the rules and regulations of the Indiana Alcohol and Tobacco Commission, specifically 905 IAC 1-10-1 and 905 IAC 1-10-2.
12. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that M T M Services Inc., D/B/A Porter's Tap is hereby found to have violated the rules and regulations of the Indiana Alcohol Tobacco Commission and is hereby fined and ordered to pay the sum of \$1,000.00 for such violations.

All of which is ordered this 1st day of September, 2022.



 James W Payne, Hearing Judge
 Indiana Alcohol and Tobacco Commission

Commission Adoption:


Date: 10/4/22




 Jessica Allen, Chair



 Marjorie Maginn, Commissioner



 James Payne, vice Chair



 Dale Grubb, Commissioner