

STATE OF INDIANA

THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)
THE PERMIT OF)
CLAY TOWNSHIP CIVIC AND DEMOCRATIC CLUB) **PERMIT NO. RC71-07828**
109 EAST PENDLE (ROSELAND))
SOUTH BEND, INDIANA 46637)

Permittee.

ORDER ON TRIAL HEARING

Comes now the Hearing Judge, and this matter having come before the Indiana Alcohol and Tobacco Commission on appeal from St. Joseph County Local Alcohol Board where the board denied a renewal for the permit number RC71 - 07828 issued to the Clay Township Civic and Democratic Board, and now makes the following findings and order.

BACKGROUND OF THE CASE

The Clay Township Civic and Democratic Board (Permittee) was issued an alcohol permit under RC71-07828 a long time ago (under testimony it was stated that the Permittee club has been in existence for 76 years) was issued a notice of violation and there was a subsequent settlement offer letter for a violation of IC 7.1-5-7-8, Furnishing Alcohol to a Minor and 905 IAC 1-13-3, Non-Members – Club (Sale To) on October 28, 2021. Subsequently, on December 12, 2021, a Notice of Violation of Settlement Offer letter was signed by Permittee wherein the Permittee agreed to the violation and agreed to a civil penalty of \$2000 and a suspension of the alcohol permit for three days. As a direct result of that violation and other statements at the renewal hearing, the St. Joseph County Local Alcohol Board (Board) denied the request of the Permittee to renew its license. As a result of the denial, the Indiana Alcohol and Tobacco Commission (ATC) approved the denial by the local Board. Subsequently the Permittee appealed the denial of the application to the full ATC and this hearing resulted.

FINDING OF FACTS

1. Permittee is a club of long-standing in South Bend, St. Joseph County, Indiana, perhaps as long as 76 years.

2. Permittee is the holder of an alcohol permit under RC71-07828, the permit issued under IC 7.1-3-20 et seq. and subject to the requirements and restrictions under that chapter as well as under 905 IAC 1-13 et seq., Clubs.
3. On or about October 28, 2021, an Indiana state excise officer along with an individual who at the time was 19 entered onto the premises of Permittee at 109 E. Pendle St., South Bend, Indiana and each requested a bottle of Miller Lite beer, were served the beer, paid for the beer, and left the premises with the officer returning to file violations under IC 7.1-5-7-8, Furnishing Alcohol to Minor and 905 IAC 1-13-3 service to Alcohol to Nonmember.
4. On or about October 26, 2022, Permittee had a scheduled permit renewal hearing before the local Board and after a hearing with testimony, the Board voted 3 to 0 to deny the renewal of the permit.
5. Per statute, the ATC on November 15, 2022, at a regular meeting voted to affirm the denial of the renewal of the permit for the Permittee.
6. On or about December 1, 2022, attorney Peter Agostino filed with ATC his Notice of Objection and Request for Appeal Hearing Regarding the Denial of Permit No. RC71-07828.
7. At the *de novo* hearing, , on the denial of the request to renew the permit of Permittee under RC71-07828, was held on February 21, 2023 at the offices of the ATC with James W. Payne serving as the Hearing Judge for the ATC
8. Prior to the submission of evidence and testimony, the Hearing Judge indicated that he would take judicial notice of the information and files of ATC regarding the Permittee under permit number RC71-07828, in addition to the testimony and evidence presented on February 21, 2023.
9. Elizabeth McCombs, the Treasurer of Permittee, sole witness testified to the following:
 - a. She is the recently elected Treasurer of Permittee, is the town Council President where the club is located, and in fact lives next to the club.
 - b. The club is generally for older individuals, 55 and over, and many are not only parents but grandparents.
 - c. The club serves as the unofficial community center for that local community with many of their members being seniors and veterans.
 - d. She testified that she was at the club on October 28, 2021, when the violations under paragraph 3 occurred and is aware that the bartender at the time was a new employee

and that she did not follow the established rules and regulations of the club regarding admission to the premises and serving of alcohol.

- e. At the time of the violation, the club had a locked door entering onto the premises and only the bartender was allowed to let people in; but at the time, there was not sufficient security or control of the door and the entrance to the facility in that a club member mistakenly let in the excise officer and the underage female with him.
- f. The new bartender, thinking there was limited access for members only who are generally seniors and 55 or older and are members, did not ask for identification for the underage individual.
- g. There was no statement provided at the hearing regarding the fact that state law requires a club to have a guest registry at the entrance of the facility or that guests must sign in as a requirement for admission and access to the facility and its services.
- h. She indicated that the elected board of the club were distraught about the violations that occurred and readily admitted the violations, paying a \$2000 fine and serving a 3-day suspension of the alcohol permit which the Club immediately implemented—learning later that they should have waited to receive notification from the excise police which 3 days they should close and when notified did actually close for another three day period of time.
- i. She further indicated that a result of the violation was that the club increased security and admission processes that include a key card which opens the door, that each member has his/her own key card that not only records their admission but allows admission to the facility; attached new warnings about the requirements of membership and admission; that members may not let any individual in but the bartender or board member must let them in; that there is a guest membership registry at the door that must be signed; that only members can get alcohol for themselves or guests; and that an individual can only be a guest one time and then they must join the club.
- j. She testified that there were no violations of any kind between November of 2021 and the date of the hearing before the Local Board which denied the renewal petition and that there have been no violations since then either.

- k. She further indicated that there are 4 bartenders and that they meet monthly to go over training and other issues regarding the appropriate operation of the club, its facilities and compliance with the alcohol rules and regulations of the State of Indiana.
 - l. She testified that there are approximately 400 members in the club, the dues are \$20 per year, and that someone entering the facility can be a guest 1 time but after that they must pay the \$20 annual fee.
 - m. She testified that no children are allowed onto the premises.
 - n. She further stated there are approximately 7 or 8 "open" days a month – guest days- for the facility to be open to guests and that some of those days are Notre Dame home football games.
 - o. She indicated that the club itself has existed in the community for a long time, is very civic minded, and in fact the club makes the facility available for free, not charging a fee, for funerals and weddings.
10. The following Exhibits were admitted into evidence:
- a. Exhibit 1- a sign with a "stop sign" indicating that only the bartender or a board member is allowed to give entrance to guests.
 - b. Exhibit 2 – a sign indicating that an individual entering must have a membership card on them and instructing others not to let anyone in and that only a bartender or board member can do that.
 - c. Exhibit 3- a sign indicating the name of the club, that entering individuals must be 21 or over, be a member, have an ID, and have the membership card ready to show to the bartender.
11. While there was testimony at the Local Board meeting in October of 2022 that the club has a lot of prior history, is notorious for violations, that the club has been rude to excise officers, is terrible to deal with and has a terribly bad reputation, there is no specific testimony or evidence regarding those statements.
12. There was also an allegation that guests in the past have been told "come in, sign the book"- again there was no specific information to support this statement.
13. There was also testimony that, for the most part, the club board is composed of new members and that they had no idea of the past history or the statements made in paragraph 11.

14. In fact, the records of the local excise police district office show that, in almost every month for the last two years, the Permittee has requested and received authority from the local excise police district to conduct guest days for the most part seven days a month.
15. A review of the records of ATC demonstrates that there are violations on the record during the years 2021, 2016, 2015, 2014, and 2006; for a total of five violations in 15 years.
16. Since there were no specific, identified written statements, oral statements, or documentation that would suggest that the Permittee or its members were or are rude, were or are terrible to deal with, treat excise police poorly, or that the Permittee has a terribly bad reputation, and since it would be necessary for those specific allegations to be documented, the Hearing Judge finds that the decision to deny the renewal of the permit was arbitrary, capricious, and an abuse of discretion, and was not supported by substantial evidence.
17. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

CONCLUSIONS OF LAW

1. The Alcohol and Tobacco Commission has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 6.1-2-3-4.
2. The Commission is authorized to act under proper application and renewal of the application.
3. 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).
4. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including the public hearing and a review of the record and documents in the Commission file. IC 7.1-1-3-19-1 1(a); 905 IAC 1-36-7(a); 905 IAC 1-37-1 1(2); and IC 4-21.5-3-27(d).
5. The findings here are based exclusively upon the substantial in reliable evidence in the record of proceedings and on matters officially noticed in the proceedings. 905 IAC 1-37-11 (e)(2) and IC 4-21.5-2-27(d).
6. The local Board appears to have based its recommendation and decision not to renew the permit based upon statements made that the Permittee has “a lot of prior history”, “is notorious for violations”, is “terrible to deal with”, has a “terribly bad reputation”, and “treats excise poorly”.
7. At the Local Board hearing, there were no specific statements or allegations delineating the date, time, place, and parties involved in same to support the statements in paragraph 6.

8. Permittee is an alcohol permit holder under IC 7.1-3-20-1 listing the general requirements of a "club" requiring in part that it has at least 50 members and is not operated for pecuniary gain.
9. IC 7.1-3-20-6 lists the qualifications for membership which include that membership is obtained by the payment of dues in the required manner and that the person's name and address must be entered in the membership list which is supplied to the Commission and provided for the commission upon renewal of the permit.
10. IC 7.1-3-20-8.6 indicates that the holder of a club permit may designate 1 and up to 7 days each calendar month as "guest days", keep a record of all designated guest days, invite guests who are not members of the club to attend on the guest day, and keep a guestbook listing member and their non-member guests except on designated guest days.
11. 905 IAC 1-13-2 states that an application for a club permit shall include a list with the name and address of each member who is permitted to use the facilities and that such membership list shall be amended and revised by the Permittee showing cancellations of membership and new members, every six months.
12. 905 IAC 1-13-3 states that no holder of a club permit shall sell or give alcoholic beverages to any person not a member of the club and, unless that person's name and address is included in the membership list, filed with the commission as amended and revised. It also states that club permittee's have the privilege of inviting guests on one night only of each month of the year.
13. 905 IAC 1-13-5 states that no holder of a club permit shall lease or rent its bar facilities to an outside organization or group of persons to use its bar or to furnish, sell, dispense or give away alcoholic beverages on the premises.
14. 905 IAC 1-13-6 states that no holder of a club permit may operate on "guest nights" without notification and approval in writing from the local state excise police district office. It also states that such written approval and notice must be publicly posted in a conspicuous place on the premises prior to the guest night.
15. While there was no specific statement or allegation that the Permittee was in violation of any of the above stated statutes or administrative codes, the Treasurer did state that the club makes its facilities available for weddings and funerals to the local community but did not include in that statement that they did notify the Indiana State Excise Police. It is assumed, that if they did not so notify the local Excise Police district, it is because alcohol is not served on the premises during those events and therefore the club is not in violation of those sections.

16. Since the Hearing Judge has found that the decision of the Local Board to deny the renewal of the permit was arbitrary, capricious, and an abuse of discretion, and was not supported by substantial evidence it follows that the denial of the renewal of the permit was in error in must be reversed.

17. Any Conclusion of Law may be considered a Finding of fact if the context so warrants.

IT IS THEREFORE ORDERED AND ADJUDGED that the decision of the St. Joseph County Local Alcohol Board to deny the renewal of the permit of the Clay Township Civic and Democratic Club is reversed and the permit under RC71-07828 is hereby renewed and reinstated.


All of which is ordered this 2nd day of February, 2023.



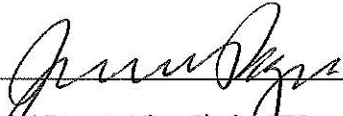
James W. Payne, Hearing Judge

The Indiana Alcohol and Tobacco Commission pursuant to 905 IAC 1-37-13 hereby accepts the proposed final order of the Hearing Judge and designates this as its final order.


DATED this 7th day of March 2022



Jessica Allen, Chair, ATC



James W. Payne, Vice Chair, ATC



Marjorie Maginn, Commissioner, ATC



Dale Grubb, Commissioner, ATC

CC :

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