

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
CATARACT GAS AND GROCERY LLC)	
5 SOUTH MAIN ST.)	PERMIT NO. DL67-30743
CLOVERDALE, IN 46120)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Cataract Gas and Grocery, LLC, permit number DL67-30743 (“Applicant”), is the applicant for a permit to sell liquor, beer and wine in a package store located in an incorporated area to be issued by the Alcohol and Tobacco Commission (“Commission”). The renewal application was assigned to the Alcoholic Beverage Board of Putnam County (“Local Board”). The Local Board held a hearing on June 21, 2016, and voted 4-0 to approve this application. On July 5, 2016, the Commission voted 4-0 to approve the application at its regularly held meeting. The application was put into escrow on July 6, 2016.

Following the issuance of the permit, the permittee signed a contract for improvements on the premises and put a deposit down on the construction. The quota for package store permits in Cloverdale is one (1). In the months that followed, the Commission discovered that, due to a scrivener’s error, the Commission had reassigned permit number DL67-30458 earlier in the year to Putnam County, rather than keeping it in Cloverdale, which “freed” up a permit in Cloverdale. Upon discovering that the Commission had issued a permit to the Applicant which was actually over quota, Chairman Cook met with the owner of the Applicant, Mr. Shoaib

Shah, to explain the situation and inform him that his permit was issued illegally and he could not operate under it.

On September 20, 2016, Applicant filed a letter requesting an Appeal Hearing, and the matter was assigned to the Hearing Officer David Rothenberg (Hearing Officer). The matter was set for hearing on October 20, 2016. Applicant did not show up for the hearing. The Hearing Officer 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 Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 - 1. Shoaib Shah, Owner of Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 - 1. None.
- C. The following individuals testified before the Local Board against the Applicant in this cause:
 - 1. None.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 - 1. None.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 - 1. None.

- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. None.
- C. The following individuals testified before the Commission against the Applicant in this cause:
1. None
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
1. None

IV. FINDINGS OF FACT

1. Cataract, LLC, 5 South Main Street, Cloverdale, Indiana 46120, permit number DL18-27519 is the Applicant for a package store permit. (ATC File).
2. The Applicant meets the all of the qualifications to operate a package liquor store. (Local Board Hearing).
3. The permit was originally issued on July 5, 2016, and put into escrow. (ATC File).
4. On November 4, 2015, permit DL67-30458 registered a name change and, during that procedure, was accidentally reassigned to Putnam County, rather than the town of Cloverdale, Indiana. (ATC File).
5. Cloverdale, Indiana, is a town in Indiana that has a population of 2,114 people. (US Census, 2010).
6. Any Finding of Fact may be considered a Conclusion of Law, if the context so warrants.

V. 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 renewal application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
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. 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 Commission may issue only one (1) package liquor store dealer's permit in an incorporated city or town for each eight thousand (8,000) persons. Ind. Code § 7.1-3-22-5.
8. Any Conclusion of Law may be considered a Finding of Fact, if the context so warrants.

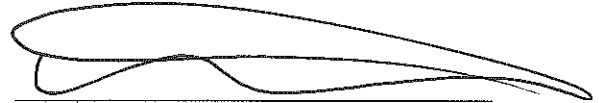
VI. RECOMMENDATION

Although it appears that the Applicant was awarded a permit by the Commission in violation of Ind. Code § 7.1-3-22-5, there is no statutory allowance, under any circumstance, for the Commission to use any discretion as to not obeying the quota dictated by statute. In this

case, the Applicant was issued a permit that exceeded the quota, although, at the time of issuance, the Commission was not aware of this occurrence.

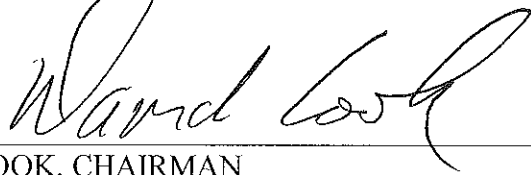
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Putnam County Local Board resulting in a 4-0 vote to award the application for the permit number DL67-30743, was made in violation of the statutory quota requirements of Indiana and the Alcohol and Tobacco Commission should revoke said application.

DATE: November 14, 2016

A handwritten signature in black ink, appearing to read "David Rothenberg", written over a horizontal line.

David Rothenberg, Hearing Office

Approved this 4 day of November, 2016.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER