

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
D & SS COUNTRY STORE INC.)	
d/b/a D & S COUNTRY STORE)	PERMIT NO. DL47-29562
163 RAILROAD STREET)	
HURON, IN 47437)	
)	
Applicant.)	

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

I. BACKGROUND OF THE CASE

D & SS Country Store, Inc. d/b/a D & S Country Store, 163 Railroad Street, Huron, Indiana 47437, permit number DL47-29562 (Applicant), is the Applicant a type 116¹ Alcohol and Tobacco Commission (ATC or Commission) permit. The application was assigned to the Alcoholic Beverage Board of Lawrence County (Local Board). The Local Board held a hearing on January 28, 2013, and voted 3-0 with respect to this application. On February 5, 2013, the Commission voted to deny the application at its regularly held meeting.

On or about February 13, 2013, the Applicant filed a request for appeal hearing, and the matter was assigned to the Hearing Officer Melissa Coxey (Hearing Officer). The matter was set for hearing on August 5, 2013, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. 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.

¹ Beer and wine dealer in an unincorporated area

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 - 1. Sujan Singh, 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. Pastor Allender, pastor of the Huron Baptist Church.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 - 1. None.

IV. 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. Greg Besser, property owner in Huron.
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
 - 1. None.

E. The following evidence was entered into the Commission file against the Applicant in this cause:

1. Chronological case summary for the following cause numbers: 47D02-1306-SC-000702, 47D02-1204-CM-000388, 47D02-1303-FD-000361, 47D02-1302-FD-000210, 47D02-1212-FD-001438, 47D02-1205-IF-001026, 47D02-1107-IF-01799, 47D02-1009-IF-02793, 47D02-0904-IF-01372 and 47D02-0908-MC-00103.

V. FINDINGS OF FACT

1. D&SS Country Store, Inc., d/b/a D&S Country Store, 163 Railroad Street, Huron, Indiana 47437, permit number DL47-29562, is the Applicant for a Type 116 permit. (ATC File).

2. Eighteen people appeared personally at the Local Board to remonstrate against issuance of the permit. (ATC File).

3. No evidence was presented in support of the application. (Local Board Hearing).

4. In July 2009, Applicant's driving privileges were suspended for failure to appear for hearing in 47D02-0904-IF-01372. (ATC File).

5. In September 2009, Applicant entered a plea of guilty for sale of tobacco to a juvenile in 47D02-0904-IF-01372. (ATC File).

6. In October 2011, Applicant entered a plea of guilty for failure to yield right-of-way to emergency vehicle in 47D02-1107-IF-01799. (ATC File).

7. In July 2012, Applicant entered a plea of guilty for failure of occupant to use safety belt in 47D02-1205-IF-001026. (ATC File).

8. In June 2013, Applicant entered a plea of guilty for dealing in a synthetic drug in 47D02-1212-FD-001438. (ATC File).

9. In June 2013, Applicant entered a plea of guilty for battery in 47D02-1302-FD-000210. (ATC File).

10. In June 2013, Applicant entered a plea of guilty for possession of a synthetic drug in 47D02-1303-FD-000361. (ATC File).

11. Remonstrators presented evidence to indicate that the Applicant is not of good moral character and of good repute in the community. (Local Board Hearing; ATC Hearing).

12. The Applicant failed to appear at the ATC Hearing; therefore, he failed to present any evidence to indicate he is of good moral character and of good repute in the community. (ATC Hearing).

13. The weight of the evidence indicates the Permit should be denied. (Local Board Hearing; ATC Hearing).

14. 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 § 7.1-3-1-4.

3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Officer 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 Officer conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing and a review of the record and documents in the ATC 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. Remonstrators need not demonstrate that they would be personally aggrieved or adversely affected by the issuance of the permit to remonstrate at the Local Board Hearing or the ATC Hearing. A remonstrator is subject to the “aggrieved or adversely affected” requirement only if he or she wishes to become a “party” to seek administrative review of the Local Board’s decision. *Ind. Ass’n of Beverage Retailers, Inc.*, 836 N.E.2d at 258 (holding persons may remonstrate at a hearing even though they lack standing to pursue administrative or judicial review.)

8. The Commission shall not issue a permit if the Applicant is not of good moral character and of good repute in the community. 905 IAC 1-27-1.

9. The Commission shall follow the recommendation of a majority of the members of a local board to grant or deny an application unless, after the commission’s review, the commission determines that to follow the recommendation would be (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.

10. The recommendation of the Local Board was based on substantial and reliable evidence. Ind. Code § 7.1-3-19-11.

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

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Lawrence County Local Board resulting in a 3-0 vote concerning the application for the permit number DL47-29562 was supported by substantial evidence, was not arbitrary and capricious, or otherwise not in accordance with law and the Alcohol and Tobacco Commission should deny said application. The application of D & SS Country Store, Inc., d/b/a D & S Country Store, 163 Railroad Street, Huron, Indiana, 47437 for the Type 116 permit was insufficient and the permit applied for herein is DENIED.

DATE: August 5, 2013

Melissa L. Coxey, Hearing Officer