

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

| | | |
|---------------------------------------|---|-----------------------------|
| IN THE MATTER OF |) | |
| THE PERMIT OF |) | |
| |) | |
| TOM JEWELL FOOD SERVICES, INC. |) | PERMIT NO. RR4825975 |
| 1000 W. 3RD STREET |) | |
| ANDERSON, IN 46016 |) | |
| |) | |
| Applicant. |) | |

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Tom Jewell Food Services, Inc. 1000 W. 3rd Street, Anderson, IN 46016 (Permittee), permit number RR4825975 (Permit), is the permit holder of a retail restaurant permit to sell beer and wine in an incorporated area. Permit renewal was denied by the Alcohol and Tobacco Commission December 18, 2018 for failure to meet qualifications.

Judicial notice is taken of the entire Commission file for permit number RR4825975, including the documents attached hereto as Exhibit 1 and Exhibit 2.

II. FINDINGS OF FACT

1. Tom Jewell Food Services, Inc. 1000 W. 3rd Street, Anderson, IN 46016 (Permittee), permit number RR4825975 (Permit), is the permit holder of a retail restaurant permit to sell beer and wine in an incorporated area. (ATC File.)

2. Permittee received a citation from Indiana State Excise Police (ISEP) on October 29, 2016 for the following and the Prosecutor sent a settlement offer on December 18, 2017 for the following violations:

- i. Ind. Code § 7.1-5-7-8, Furnishing alcohol to a minor, \$750;

ii. Ind. Code § 7.1-5-6-3, Employee acting without a permit, deferred;

iii. 905 IAC 1-12-1, Employee permit, \$75. (ATC File.)

3. The settlement offer set the violations for a pre-hearing conference on February 13, 2018. Permittee failed to appear for the pre-hearing conference. (ATC File.)

4. Permittee signed the settlement offer on August 6, 2018 and attempted to pay the fine amount of \$825 with a check on a closed account. (Exhibit 1.)

5. The Commission received renewal application for Permit on August 6, 2018. (ATC File.)

6. Permittee paid for the renewal application fee with a separate check, but also on a closed account. (ATC File.)

7. Both checks were returned with insufficient funds because they were written on closed accounts. (ATC File.)

8. On August 21, 2018, the Commission ordered the permittee to pay, with certified funds, the renewal fee and extension fee of \$800.00, the fine amount of \$825, and the two service fees totaling \$70, for total amount owed of \$1695.00. That order was sent to the mailing address on file for the business. (Exhibit 2.)

9. The Commission's accounting department sent a letter requesting replacement funds on October 4, 2018 (ATC File.)

10. The Commission's accounting department sent a letter requesting replacement funds on October 26, 2018 (ATC File.)

11. The Commission's accounting staff talked to Permittee on the phone on November 9, 2018 and Permittee advised that funds were mailed on November 5, 2018 and he

would call back on November 14, 2018 to confirm that funds were received. (ATC File, Administrative Hearing.)

12. The accounting staff did not receive a follow up phone call on November 14, 2018.

13. The Commission's accounting department sent a letter requesting replacement funds on November 21, 2018. (ATC File.)

14. The Commission's accounting staff talked to Permittee on December 12, 2018 and the Permittee stated that replacement funds would be sent within 7-10 days. (ATC File, Administrative Hearing.)

15. The Commission reviewed the Permit application on December 18, 2018 and found that replacement funds were not received. (ATC File.)

16. The Commission denied Permittee's renewal application for failure to meet qualifications to hold the permit. (ATC File.)

17. Permittee appealed the denial of the renewal permit and a hearing was held January 29, 2018. (ATC File.)

18. Permittee testified that he was providing the money to his brother to pay the amount due to the Commission and that he believed his brother was making those payments to the Commission. (Administrative Hearing.)

19. Permittee confirmed that he was the one that spoke to the accounting staff on the phone and that the mailing address on file with the Commission is the mailing address for the business. (Administrative Hearing.)

20. 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. A permittee shall have no property right in a retailer's or dealer's permit of any type. Ind. Code §7.1-3-1-2.
3. The Commission is authorized to act upon proper application. Ind. Code § 7.1-3-1-4.
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 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).
6. In determining whether to renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. Ind. Code §7.1-3-23-5.
7. The Commission may reverse a local board's action in denying an application for a permit *only* 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.

8. Ind. Code § 7.1-4-4.1-9 sets the annual permit fee for a beer and wine retail permit at \$750.
9. Ind. Code § 7.1-4-4.1-7 sets the fee for an alcohol permit extension at \$50.
10. Ind. Code § 7.1-3-23-2 allows the Commission to fine a permittee for the violation of a provision of Title 7.1 or a rule or regulation of the Commission.
11. The maximum fine for each violation is \$1000. (Ind. Code § 7.1-3-23-3(3).
12. A permit violation proceeding is initiated by the service of a notice of violation by United State mail. (905 IAC 1-37-1 and 905 IAC 1-37-2.)
13. Ind. Code § 7.1-3-1-3 allows the Commission to timely process renewal applications *unless the permittee receives a notice of a violation from the office of the prosecutor.*
14. Permittee has not paid the renewal application fee as required by Ind. Code § 7.1-4-4.1-9.
15. Permittee has not paid for the extension received by the permittee as required by § 7.1-4-4.1-7.
16. Permittee has not resolved the violations which occurred October 29, 2016 as required by Ind. Code § 7.1-3-1-3.
17. Permittee was ordered by the Commission to pay the money owed to the Commission on August 21, 2018.
18. Permittee was sent three letters requesting the money owed to the commission.
19. Permittee was contacted twice by telephone to request the money owed.
20. Permittee has not met the requirements to hold a beer and wine retail permit and has been given additional time and six separate notices to comply.

21. The Commission properly denied the renewal application on December 18, 2019.

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

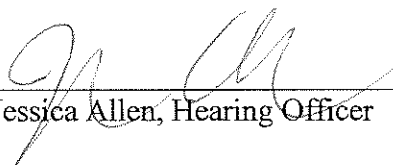
IV. RECOMMENDATION

Permittee has not met the requirements to hold a beer and wine retail permit and has been given additional time and six separate notices to comply. Permittee signed the settlement offer from the Prosecutor on August 6, 2018 and still owes an outstanding fine amount of \$825.

Permittee owes the Commission \$70 that resulted from two fees charges to the Commission for insufficient funds fees. Upon denial of the application, the permittee's application fee would be refunding with the exception of a \$35 processing. The Commission does not seek to collect the renewal fees and will forego the \$35 processing fee in this matter.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that permit number RR4825975 shall be REVOKED. Permittee shall pay to the Commission the amount of \$70 that resulted from fees from checks submitted to the Commission on accounts with insufficient funds and the amount of \$825 for the fines assessed in the settlement offer.

DATE: March 15, 2019

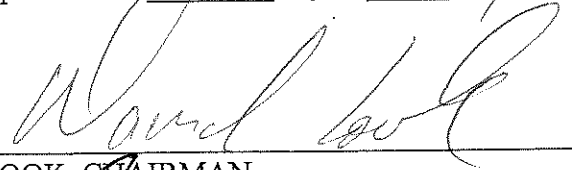


Jessica Allen, Hearing Officer

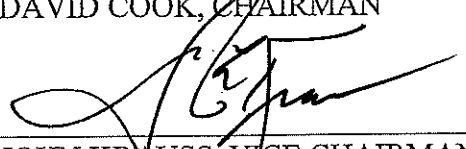
Distribution:

Tom Jewell Food Services Inc.
1000 W. 3rd St.
Anderson, IN 46016

Approved this 16th day of April, 2019.



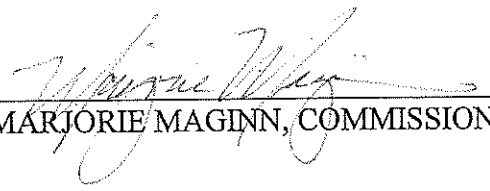
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JOHN KRAUSS, VICE CHAIRMAN



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MARJORIE MAGINN, COMMISSIONER