

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
WILLIAM B. SHEPHARD)	PERMIT NO. DL8202977
1207 E. MORGAN AVE.)	
EVANSVILLE, IN 47711)	
)	
Permittee.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

William B. Shephard, 1207 E. Morgan Ave., Evansville, Indiana (Permittee), permit number DL8202977 (Permit), is the permit holder of a beer, wine, and liquor package store dealer permit in an incorporated area. Permit was placed in escrow on November 8, 2013. Current permit year expired November 8, 2018.

At the July 3, 2018 meeting of the Alcohol and Tobacco Commission (Commission), the Commission ordered that this permit be made active or transferred by December 31, 2018. Permit was not transferred or made active by December 31, 2018. Commission reviewed the status of Permit at the January 3, 2019 Commission meeting and ordered Permittee to appear for a hearing on January 16, 2019 to show cause why the permit should not be revoked pursuant to IC 7.1-3-23-5 for refusing to comply with a provision of Title 7.1, specifically IC 7.1-3-1-3.5, or pursuant to IC 7.1-3-23-12 for ceasing to possess the qualifications required for the issuance of that particular permit type under Title 7.1 of the Indiana Code. Permittee appeared and an order to show cause hearing was held on January 16, 2019.

Judicial notice is taken of the entire Commission file for permit number DL8202977, including the documents attached hereto as Exhibit 1.

II. FINDINGS OF FACT

1. William B. Shephard, 1207 E. Morgan Ave., Evansville, Indiana (Permittee), permit number DL8202977 (Permit), is the permit holder of a beer, wine, and liquor package store dealer permit in an incorporated area. (ATC File.)
2. Escrow for Permit started on November 8, 2013. (ATC File.)
3. The annual permit year expired on November 8, 2018. (ATC File.)
4. Permittee held Permit in escrow for more than five years. (ATC File.)
5. The Commission ordered at its July 3, 2018 meeting that the Permittee must make Permit active or transfer it by December 31, 2018. (ATC File.)
6. The Commission reviewed the status of the Permit at its January 3, 2019 Commission meeting. (ATC File.)
7. The Commission found that the Permit remained in escrow and had not been made active or transferred by December 31, 2018. (ATC File.)
8. The Commission order the Permittee to appear for a hearing on January 16, 2019 and show cause why Permit should not be revoked. (ATC File.)
9. The Permittee appeared for the order to show cause hearing. (Administrative Hearing.)
10. Permittee held ten (10) package liquor store permits. (ATC Hearing.)
11. Permittee signed consents to transfer for those permits in 2013. (ATC File.)
12. Transferee filed a transfer application for this permit and others. (ATC File.)

13. A transfer application was filed to transfer permit DL8200788, also held by William B. Shepherd, to DL8229982, Co-op Liquor Co-op Inc. and a local board hearing was held before the Vanderburgh County Local Board on September 10, 2013. The Vanderburgh County Local Board voted three (3) to one (1) to deny the permit. (Exhibit 2.)

14. The Commission reviewed the Vanderburgh County Local Board vote on permit DL8229982 at its September 17, 2013 meeting and voted to continue the review of the permit. The Commission voted at its October 16, 2013 meeting to reverse the decision of the Vanderburgh County Local Board on permit DL8229982 and grant the transfer. (Exhibit 2.)

15. Transferee withdrew from the agreement to purchase permits held by William B. Shepherd, including Permit. (ATC Hearing.)

16. Permit expired on November 8, 2013 with no renewals on file. (ATC File.)

17. Permit remained expired until three (3) years of renewals were filed on April 19, 2016. (ATC File.)

18. Permittee requested to place the permit in escrow and the Commission granted the request for first, second, and third year escrow on June 7, 2016. (Exhibit 1.)

19. In 2014, Permittee initiated litigation relating to the agreement by transferee to purchase Permit. (ATC Hearing.)

20. Litigation concluded November 2, 2018. (Exhibit 3.)

21. Attorney for Permittee advised Permittee not to transfer Permit while litigation was pending. (ATC Hearing.)

22. The judge hearing the litigation case did not prohibit permittee from transferring permit. (ATC Hearing.)

23. Permittee entered a new agreement to sell Permit at the end of December 2018.
(ATC Hearing.)

24. Permittee sent the transfer application on January 2, 2019 by over-night mail and it was received by the Commission on January 3, 2019. (ATC File.)

25. Permittee made a good faith effort to comply with the ATC deadline of December 31, 2018.

26. Permittee has been the holder of alcohol licenses with the state of Indiana for the proceeding fifty (50) years and is considered to be in good standing with the commission.

27. That as of the May 8, 2019 meeting Executive Secretary Allen reports to the commission that all fees and paperwork necessary to effect the transfer of said permit have been presented to the commission and are complete.

28. 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 § 7.1-2-3-4.

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. Ind. Code 7.1-2-3-4 grants the Commission the power to hold permits on deposit as authorized by Ind. Code 7-1-3-1-3.5.

4. Ind. Code § 7.1-2-3-4.5 states that the chairman may exercise only those express powers enumerated in this title; however, this section does not limit the powers granted to the commission by section 31 of this chapter.

5. For permits initially deposited with the Commission before July 1, 2016, the 2019 Indiana General Assembly through enactment of House Enrolled Act 1518 has extended the date for which those permits must be made active to July 1, 2020.

6. The permit in question was deposited with the Commission on November 8, 2013.

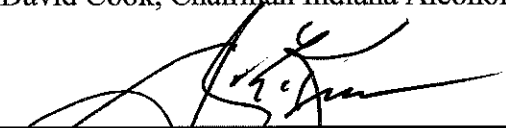
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by the Commission that:

1. The Findings of Fact & Conclusions of Law submitted for the Commission's consideration on April 2, 2019 are rejected.
2. That the escrow request is approved for the purposes of the immediate processing of the renewal and transfer of the application.
3. The ATC processor is directed to process the renewal and transfer paperwork and to schedule the matter for the Vanderburgh County local board hearing forthwith.


DATE: May 8, 2019.



David Cook, Chairman Indiana Alcohol & Tobacco Commission



John Krauss, Vice Chairman Indiana Alcohol & Tobacco Commission



Dale Grubb, Commissioner Indiana Alcohol & Tobacco Commission



Marjorie Maginn, Commissioner Indiana Alcohol & Tobacco Commission

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