

The STATE OF INDIANA
THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF

THE PERMIT OF

SMOKEVILLE 2 LLC)

PERMIT NO. TC17284001

204 EAST RUDISILL BLVD.)

FORT WAYNE, INDIANA 46806)

PERMITTEE

CORRECTED ORDER ON RULE TO SHOW CAUSE HEARING

Comes now James W Payne, Hearing Judge, and having presided over the Rule to Show Cause hearing in the above-entitled matter, makes the following findings and orders:

1. BACKGROUND OF THE CASE

Smokeville 2 LLC (Permittee) is the holder of a retail tobacco license issued by the Indiana Alcohol and Tobacco Commission (ATC). The ATC sent a Notice of Hearing to Permittee on October 2, 2024, scheduling a hearing on the above-entitled permit number for a violation of IC 35-46-1-11.4 which prohibits a tobacco or vaping business from operating within one thousand (1,000) feet of a private or public elementary or secondary school. Permittee appeared for the hearing which was conducted and concluded on October 29, 2024.

II. FINDINGS OF FACT

1. ATC sent Notice of Hearing to Permittee at the address of record on October 2, 2024, which notice included the date for the final hearing of October 29, 2024, at 10:00 AM.
2. The alleged violation was for IC 35-46-1-11.4 prohibiting the sale of tobacco, and vaping products from a business operating within 1000 feet of:
 - A) a private or public elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco and vaping business in the nearest point of a building used by the school for instructional purposes; or
 - B) school property, as measured from the nearest point of the premises occupied by the tobacco and vaping business.
3. The Order to Show Cause hearing was scheduled for October 29, 2024, at 10:00 AM, EST in the ATC hearing room located at Indiana Government Center South, Room E114, 302 W. Washington St., Indianapolis, Indiana.

4. At 10:00 AM on October 29, 2024, Permittee appeared by its owner, Ahmed Younis who indicated that he was ready to proceed with the hearing.
5. The Hearing Judge heard testimony and evidence first through Indiana State Excise police officer, Mark Oster who testified to the following:
 - A. He is an Indiana State Excise Police Officer in District 2 and is the evidence technician for that District.
 - B. Prosecutor submitted Exhibit 1 into evidence without objection which is the Online Initial Application for Smokeville 2 LLC for a tobacco license in the State of Indiana.
 - C. Question 11 asked “(d)o you understand that a new business selling tobacco may not operate within 1,000 feet of a public or private elementary or secondary school” to which the Permittee responded “Yes”.
 - D. Question 12 asked “Is your business located within 1,000 feet of a public or private elementary or secondary school” to which the Permittee responded “Yes”.
 - E. The officer testified that the Permittee’s place of business is within 1,000 feet of a public school.
 - F. The Prosecutor submitted Exhibit 2, into evidence without objection, which is a GS map of Allen County, Indiana, an aerial map with a yellow line drawn from the Permittee’s place of business to the local public school, as a straight line showing the distance of 969 feet.
 - G. The Prosecutor submitted Exhibit 3 into evidence without objection, showing that the officer measured the distance from the Permittee’s place of business to the school using a Measure Master which showed the distance being 995 feet.
 - H. The officer testified that the difference between those two distances is that he had to walk around some obstructions (as opposed to the GS mapping a straight line) and could not do a straight line.
 - I. The officer also testified that the Permittee is listed as a tobacco shop by its outside signs.
6. The Hearing Judge then heard testimony and evidence through the owner of the Permittee, Ahmed Younis, who testified to the following:
 - A. He presented Permittee’s Exhibit A offered and received into evidence which is a picture of the front of the building.

- B. He then presented Permittee's Exhibits B and C, offered and received into evidence, showing the business premises of Permittee before being remodeled. (It should be noted that notes on the back of Exhibit C are his personal notes of what to testify about and were objected to, by the prosecutor, which was sustained, and they are not to be considered as evidence).
 - C. He presented Permittee's Exhibits D, E, F and G, offered and received into evidence showing various items for sale inside the premises not associated with tobacco products.
 - D. He then presented Permittee's Exhibit H, offered and received into evidence, showing tobacco products for sale in the premises.
 - E. He then presented Permittee's exhibit I, offered and received into evidence, the Business Lease for the premises of the Permittee business.
 - F. He acknowledged that by a straight line, the premises are located closer than 1,000 feet to the school.
 - G. He indicated, however, that if one started at the school, walked to the sidewalk, then walked to a street heading toward the business, and then walked on the sidewalk to the business premises that it was more than 1,000 feet.
 - H. He stated that the business at that location opened on June 13, 2024, that he received a merchant's certificate on June 20, 2024, and that the application for the tobacco license with ATC was filed on June 21, 2024.
 - I. He acknowledged that Respondent's Exhibit A is an accurate picture and portrayal of the front of the Permittee's business.
 - J. He made a statement that approximately 85% of the sales were nontobacco and that 35% of the amount of sales were tobacco or vape products
7. The Permittee acknowledged and the Hearing Judge finds that on its application for a tobacco permit with ATC, Permittee understood and knew that a Permittee could not sell tobacco or vape products within 1,000 feet of a public or private elementary or secondary school.
8. The Permittee acknowledged and the Hearing Judge finds that on its application for a tobacco permit with ATC Permittee acknowledged that the premises were within 1,000 feet of a public or private elementary or secondary school.

9. The Hearing Judge finds that even without acknowledgment by the Permittee, the measurements presented by the Indiana State Excise Police show that by a straight line, the Permittee's premises are within 1,000 feet of a public or private elementary or secondary school.
10. The Hearing Judge finds that at the time it filed its Online Initial Application on June 21, 2024, the Permittee knew that it was within 1,000 feet of a public or private elementary or secondary school and opened for business regardless.
11. The Hearing Judge finds that at the time that the Permittee began selling tobacco and vape products, it did not make an application or notice on its application that it was additionally selling other products, regardless of the percentage of sales of tobacco and vape products to nontobacco or vape products.
12. The Hearing Judge finds that the Permittee has not operated as a grocery or convenience store either by its application or by indication to the public of its products and business having shown by Exhibit A, offered and received into evidence, that the Permittee advertised itself as "Smokeville" selling Ecigs, Cigs, Tobacco, CBD and Pipes, never mentioning that there were non-tobacco or vape products also being sold.
13. Permittee produced its Business Lease which states in Paragraph Six (6) that the Permittee's use and occupancy of the premises shall be "for the retail sale of tobacco products and smoking equipment and devices; and for no other purpose without the prior written consent of the landlord".
14. The Hearing Judge finds that the Permittee received a tobacco license from ATC under false and misleading circumstances, knew (or at the very least should have known) that it would be operating a tobacco and vaping business at that location and, having opened prior to applying for and obtaining that tobacco license from ATC, only intended to sell tobacco and vaping products from that location.
15. There is no reason to believe that Permittee will, or even can with the current Business Lease, in the future conduct its business authorized under its permit pursuant to the laws rules, regulations, and policies under which the permit was issued by ATC.
16. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

III CONCLUSIONS OF LAW

1. ATC has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 7/1-2-3-4.

2. Notice of the violation of the location of the premises was proper. 905 IAC-1-37-1 and 905 IAC 1-37-2.
3. Permittee was given the opportunity to fully participate in the hearing. 905 IAC 1-37-10.
4. The order resulting from the Order for a hearing has been issued in writing within 45 days after the conclusion of the hearing. 905 IAC 1-37-12.
5. Permittee was provided written notice of the Order to Show Cause Hearing by letter from the ATC in a letter dated October 2, 2024.
6. ATC has the discretionary authority to issue, deny, suspend, revoke, or not renew all permits and certificates authorized by statute. IC 7.1-2-3-9.
7. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

IV JUDGMENT ORDER

Permittee, Smokeville2 LLC Permit # TC 17284001 attended and participated fully in the hearing on October 29, 2024, and the Hearing Judge now orders as follows:

1. The permit issued to Smokeville 2 LLC TC17284001 is hereby revoked.
2. Under IC 7.1-3-23-9 the Permittee is hereby advised that it may seek judicial review of this action by following IC 4-21.5-5 and has 15 days to so appeal this revocation.
3. This revocation order will be scheduled for a final hearing before the ATC Commission.

All of which is ordered this 29th day of October, 2024.



James W. Payne, Hearing Judge

Cc:

Prosecutor
Andre Wignall

Smokeville 2 LLC
204 East Rudisill Blvd
Fort Wayne, Indiana 46806

Approved this 17th day of December, 2024.


JESSICA ALLEN, CHAIR


JAMES PAYNE, VICE CHAIRMAN


MARJORIE MAGINN, COMMISSIONER


MARK A. JONES, COMMISSIONER