

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
B&B PETROLEUM)	
d/b/a COUNTRY CUPBOARD)	PERMIT NO. DL71-95055
26395 SR 2)	
SOUTH BEND, IN 46619)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

B&B Petroleum, 26395 State Road 2, South Bend, IN 46619, permit number DL71-95055 (Applicant), is the applicant for the renewal of a permit to sell beer and wine, in a grocery store located in an incorporated area to be issued by the Alcohol and Tobacco Commission (Commission). The application was assigned to the Alcoholic Beverage Board of St. Joseph County (Local Board). The Applicant's matter was heard on July 23, 2014, where it was denied by a vote of 3-0. On August 5, 2014, the Commission adopted the findings of the Local Board and denied the permit. Due to a scrivener's error, the permit was issued to the Applicant despite the vote to deny, with an expiration date of April 25, 2015. On March 5th, 2015, in accordance with the Commission policy, the permit was made dead and the Applicant was notified. Applicant responded by stating he was unaware of the denial and wished to appeal. On May 4, 2015, the permit was reinstated to allow an appeal, of which a letter of appeal was tendered to the Commission on May 8, 2015.

The matter was set for hearing on August 31, 2015, 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.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
 - 1. Rajinder 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. 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. Rajinder Singh, Applicant; and
 - 2. Frank Agostino, Attorney for Applicant.

- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
 - 1. Beer and Wine Grocery Store Permit issued by the Commission issued August 6, 2014; and
 - 2. Notice of Missing Information from Commission issued February 13, 2015.

- 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. B&B Petroleum, 26395 State Road 2, South Bend, IN 46619, permit number DL71-95055, is the Applicant for a beer and wine grocery store permit. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2, Ind. Code § 7.1-3-5-2, and Ind. Code § 7.1-3-15-2. (Local Board Hearing; ATC Hearing).

3. The Applicant is of good moral character and of good repute in the community as required by 905 IAC 1-27-1. (ATC Hearing).

4. On March 19, 2013, Applicant was cited for Furnishing Alcohol to a Minor under IC 7.1-5-7-8 and not complying with Mandatory Carding under IC 7.1-5-10-23. (ATC File).

5. On April 30, 2013, Applicant was cited for not complying with Board of Health Rules under 905 IAC 1-12.1-3. (ATC File).

6. On May 22, 2013, Applicant appeared in front of the Local Board and was approved for renewal. (ATC File).

7. On November 5, 2013, Applicant was cited for Furnishing Alcohol to a Minor under IC 7.1-5-7-8; not complying with Mandatory Carding under IC 7.1-5-10-23; Failing to Post Smoking Prohibited Signs under IC 7.1-5-12-7(B)(1); and Failing to Post Entrance Signs under IC 7.1-5-12-4(D). (ATC File).

8. Applicant was visited by INSEP following the November 2013 violation and was awarded a commendation. (ATC Hearing).

9. Applicant's employees who served the minors in the above cases have been terminated and the rest of the employees have undergone training. (ATC Hearing).

10. Applicant has installed computer systems which require the operator to check/scan ID before a sale is rung up. (ATC Hearing).

11. Applicant has not sold alcohol since April, 2015, due to his permit expiring.

12. 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 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, including the transcript of proceedings and exhibits before the local board. 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. In determining whether to renew a permit, the Commission may consider whether the applicant has allowed the premises to become a public nuisance, or the scene of acts prohibited by the Indiana Penal Code. 905 IAC 1-27-2.

8. 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.

9. 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.

10. In this case, the Local Board based their decision upon the number of violations taking place at the premises. (Local Board Hearing).

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

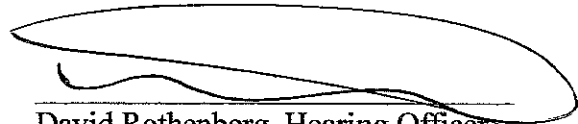
IV. RECOMMENDATION

On May 22, 2013, the Local Board approved the Applicant for renewal. Following that renewal date, the Applicant has received the citation as noted in point seven (7) of the Findings of Fact herein and one commendation as noted in point eight (8) of the Findings of Fact herein,

until they discontinued serving alcohol in April, 2015. Based on the Applicant's recent record, steps the Applicant has taken to ensure minors are not served (which include a new cash register system and classes for his employees) and the lack of any remonstrators or petitions at the Local Board or ATC hearings, the decision of the Local Board and Commission shall be overturned and the Applicant be given a one-year, strict-compliance renewal of the permit. Should the Applicant receive a material citation that results in an admission or finding of liability, the Commission should consider revoking the permit immediately.

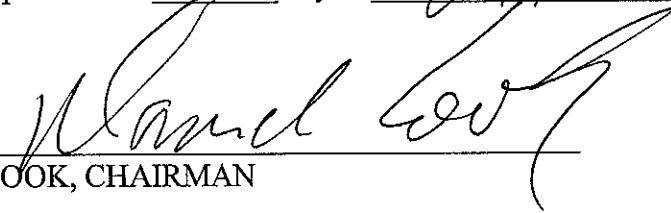
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the St. Joseph County Local Board resulting in a 3-0 vote to deny the application for the permit number DL71-95055, was not supported by substantial evidence, was arbitrary and the Alcohol and Tobacco Commission should approve said application. The application of B & B Petroleum, 26395 State Road 2, South Bend, Indiana, for a beer and wine grocery store permit, was sufficient and the permit applied for herein is APPROVED for a one-year period of time on terms of strict compliance.

DATE: September 17, 2015



David Rothenberg, Hearing Officer

Approved this 20th day of October, 2015.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER

