

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

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	<b>PERMIT NO. RR32-01070</b>
<b>R &amp; M INDUSTRIAL SUPPLY, INC.</b>	)	
<b>d/b/a FIREHOUSE BAR AND GRILL</b>	)	
<b>310 W. MAIN STREET</b>	)	
<b>PLAINFIELD, IN 46168</b>	)	
	)	
<b>Applicant.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Petitioner, R & M Industrial Supply, Inc. d/b/a Firehouse Bar and Grill, located at 310 W. Main Street, Plainfield Indiana (“Applicant”) filed a renewal of a type 210 beer, wine and liquor permit with the Alcohol and Tobacco Commission (“ATC”) permit number RR32-01070 (“Permit”). R & M’s application for the renewal of the Permit was assigned to the Local Alcoholic Beverage Board of Hendricks County (“Local Board”). The Local Board held a hearing on March 1, 2016 and voted 3-0 to deny the Permit. On March 15, 2016, the Commission adopted the recommendation of the Local Board and denied the renewal for the Permit.

On March 29, 2016, Applicant timely filed Petitioner’s Objection and Request for Administrative Review and Hearing of the Commission’s Denial of Application. No remonstrators petitioned to intervene in the appeal of the Permit. Following the Request, Applicant filed a public records request with the Commission, which took some time to fill.

The matter was set for hearing on November 1, 2016 (“ATC Hearing”) before Hearing Judge David Rothenberg (“Hearing Judge”) and at that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Judge also took judicial

notice of the entire contents of the files related to the Permit in this case ("ATC File"). Having been duly advised of the facts and law at issue, the Hearing Judge 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. Michael W. Miller, owner of Applicant; and
  2. Michael R. Miller, son of Michael W. Miller and employee of 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. ATC violation history, contained in ATC file and noted by the Local Board.

## **III. EVIDENCE BEFORE THE COMMISSION**

- A. The following individuals appeared before the Commission in favor of the Applicant in this cause:
1. Michael W. Miller, owner of Applicant;
  2. Patrick Miller, brother of Michael W. Miller;
  3. Michael R. Miller, son of Michael W. Miller and employee of Applicant; and
  4. Davey Neal, Attorney for Applicant.
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
1. Exhibit A – Pictures of the interior of premises;

2. Exhibit B – Petition in favor of Applicant renewal with approximately 124 signatures; and
  3. Exhibit C – List of 37 active permits that allegedly have had three (3) or greater serving minor violations, including two (2) from Hendricks county.
- 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. R & M Industrial Supply, Inc., 310 W. Main Street, Plainfield, Indiana, Permit number RR32-01070 is an applicant for a renewal of a type 210 beer, wine, and liquor permit with the Alcohol and Tobacco Commission. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).
3. Applicant has received the following violations (ATC File):
  - i. October 12, 2007 - Furnishing Alcohol to a Minor (IC 7.1-5-7-8) (\$500 fine);
  - ii. September 23, 2009 – Furnishing Alcohol to a Minor (IC 7.1-5-7-8) (\$500 fine);
  - iii. November 3, 2011 – Reputation and Character (\$250 fine); and
  - iv. April 1, 2015 – Furnishing Alcohol to a Minor (IC 7.1-5-7-8) (\$1,000 fine).
4. Applicant was denied by the local board based on the fact that criminal violations have taken place on the premises, based on the administrative violations above. (Local Board).
5. Local Board stated that a one-year renewal had already been given to the applicant in a prior year, of which there is no record. (Local Board, ATC File).

6. There have been at least twenty-eight (28) permits renewed in the third and fourth quarters of 2016 across the state in which at least three (3) violations of serving minors had occurred within the last seven years. (ATC Hearing, Exhibit 3).
7. RR3221040 was renewed on October 19, 2016, by the Hendricks County Local Board after having violations of serving minors alcohol in 2013, 2012, and 2009. (ATC Hearing).
8. Petitions under Exhibit B were collected on the premises after the local board hearing. The petitions began to have a detrimental effect on business, due to customers believing the Applicant may go out of business, so Applicant discontinued collecting signatures. (ATC Hearing).
9. When Applicant initially purchased bar, fights had been occurring on a regular basis, with the local police department responding to many calls. Due to changes in policies, the situation no longer occurs. (ATC Hearing).
10. Applicant has increased the level of ID validation via a stamping/wrist-banding method. (Local Board Hearing, ATC Hearing).
11. 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. 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.
9. A decision is arbitrary when it depends on individual discretion and not fixed by the law.
10. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

#### IV. RECOMMENDATION

The Applicant in this case holds a permit to sell beer, wine, and liquor on his premises, the Firehouse Bar and Grill. He has operated this establishment since 2006, and in that time has received four violations: three serving to minors, in 2007, 2009, and 2015, and one concerning reputation and character (there is no report available on the details of this violation). There have been no reports of fights or other instances that would cause the Local Board to consider the premises a nuisance. The denial is based solely upon the number of violations, especially concerning minors.

Local Boards around the state, including the county in which this was heard, have recently approved permits for locations that have received either more, or just as many, violations concerning the serving of minors. In cases where there have been three violations, they have typically occurred more recent to the renewal than that of this case. In order for the state to deny this permit in a non-arbitrary manner, the decision must be made on more than the number of violations over the period of time in this case. Admittedly, on the record, the Local Board notes that it is the number of violations, not any circumstance that would lead them to believe the premises is a public nuisance. At one point in time, the Local Board record reflects a member's inquiry as to whether this permit had been given a one-year permit in the past, which was at the time answered in the affirmative, but later proven to be false.

Though the Applicant appears to be taking matters concerning checking ID's minors more seriously, any future violation of this type shall be granted heavy weight in the evaluation as to whether or not the permit is once again, renewed.

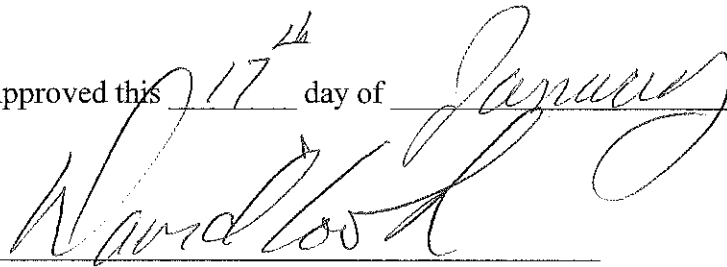
With these conditions, it is ORDERED AND DECREED that the application of R & M Industrial Supply, Inc. d/b/a Firehouse Bar and Grill, located at 310 W. Main Street, Plainfield Indiana, permit number RR32-01070 for a beer, wine, and liquor retail permit is APPROVED for a one-year period of time on terms of strict compliance.

DATE: December 19, 2016



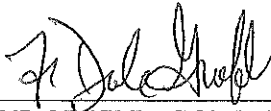
David Rothenberg, Hearing Officer

Approved this <sup>16</sup> 17 day of January, 2017.



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DAVID COOK, CHAIRMAN

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DAVID COLEMAN, VICE CHAIRMAN



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DALE GRUBB, COMMISSIONER



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MARJORIE MAGINN, COMMISSIONER