

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

IN THE MATTER OF)	
THE PERMIT OF)	
)	
YORKTOWN FOOD MART, INC.)	PERMIT NO. DL18-27716
DBA: YORKTOWN FOOD MART)	
9021 WEST SMITH STREET)	
YORKTOWN, INDIANA 47396)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

Yorktown Food Mart, Inc., d/b/a Yorktown Food Mart, 9021 West Smith Street, Yorktown, Indiana 47396, permit number DL18-27716 (Applicant), is the Applicant for renewal of a type 115¹ Alcohol and Tobacco Commission (Commission) permit. The application was assigned to the Alcoholic Beverage Board of Delaware County (Local Board). The Local Board held a hearing on June 6, 2013, and voted 4-0 to recommend denial of renewal of this permit. On June 18, 2013, the Commission voted to deny the application at its regularly held meeting.

On June 26, 2013, the Applicant filed a request for appeal hearing, and the matter was assigned to the Commission Hearing Judge Melissa Coxey (Hearing Judge). The matter was set for hearing on September 23, 2013, and 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 file related to this cause. Having been duly advised of the facts

¹ Beer and wine (grocery) dealer located in an incorporated area.

None.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

None.

V. FINDINGS OF FACT

1. Yorktown Food Mart, Inc., d/b/a Yorktown Food Mart, 9021 West Smith Street, Yorktown, Indiana 47396, permit number DL18-27716, is the Applicant for a Type 115 permit. (ATC File).

2. On or about June 11, 2012, Applicant was cited for (i) one (1) count of possession of synthetic cannabinoids, IC 35-48-4-11; (ii) one (1) count of maintaining a common nuisance, IC 35-48-4-13; (iii) one (1) count of failure to maintain high and fine reputation, IC 7.1-3-9-10; and, (iv) one (1) count of dealing in synthetic drug, IC 35-48-4-10. (Local Board Hearing).

3. Yorktown Food Mart operated as [an illegal] drug distribution center. (Local Board Hearing).

4. Criminal activity was committed on the permit premises on many occasions. (Local Board Hearing).

5. Criminal activity was perpetrated by employees of Applicant. (Local Board Hearing).

6. Applicant employed illegal aliens at the permit premises. (Local Board Hearing).

7. These illegal aliens were paid in cash and no taxes were remitted as a result of the employment. (Local Board Hearing).

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. The Applicant is not a fit and proper applicant, has not maintained a reputation for decency and law obedience, and is not qualified to hold an alcoholic beverage permit under Indiana law. 905 IAC 1-27-1 and Ind. Code § 7.1-3-9-10.

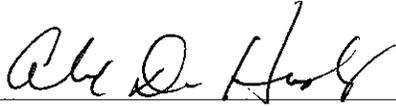
8. The Applicant is disqualified from holding an ATC permit. Ind. Code § 7.1-3-4-2(a)(2)(A); Ind. Code § 7.1-3-5-2 and Ind. Code § 7.1-3-15-2.

9. The recommendation of the Local Board was based on substantial evidence. (Local Board Hearing; ATC Hearing).

10. 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.

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

Approved this 3rd day of June, 2014.



ALEX HUSKEY, CHAIRMAN



DAVID JOHNSON, VICE CHAIR



DALE GRUBB, COMMISSIONER

MELISSA COXEY, COMMISSIONER