

**STATE OF ILLINOIS**  
**LIQUOR CONTROL COMMISSION**

TED J, LLC  
3907 GE ROAD  
BLOOMINGTON, IL 61704

Case No.: 21 APP 01

**FINAL ORDER**

Illinois Lic. 1A-1121347

Appellant,

vs.

BLOOMINGTON LIQUOR CONTROL  
COMMISSION

Appellee.

**FINAL ORDER**

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the State Commission”) upon the appeal of TED J, LLC, Appellant (hereinafter “TED J”), the State Commission being otherwise fully informed, and a majority of its members do hereby state the following:

**Procedural History**

The Bloomington Liquor Control Commission (“Bloomington Commission”) issued a “Complaint and Citation” to TED J on December 2, 2020. The charges contained in the Complaint and Citation alleged TED J violated Sections 37(E)(3) and 37(E)(4) of the Bloomington City Code (“Bloomington City Code”). A hearing was held on December 15, 2020, before hearing Local Liquor Control Commissioner Tari Renner (“Bloomington Liquor Commissioner”). On December 18, 2020, the Bloomington Liquor Commissioner entered an order that TED J had violated Sections 37(E)(3) and 37(E)(4) of the Bloomington City Code and for TED J to pay a \$600 fine.

TED J filed an appeal with the State Commission on January 4, 2021. Designated Commissioners from the State Commission held an on the record appeal hearing and heard oral arguments from both parties on December 8, 2021, via a remote audio and video conference. A quorum of the State Commissioners reviewed the entire record and deliberated on the matter at the January 19, 2022, State Commission meeting.

### **Decision**

On January 19, 2022, the State Commission AFFIRMED the Bloomington Commission decision to issue a total fine of \$600 for violations of the Bloomington City Code.

### **Standard of Review**

Section 7-9 of the Liquor Control Act of 1934 places the statutory responsibility to hear appeals from final orders entered by local liquor commissioners on the State Commission. 235 *ILCS 5/7-9*. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an “On the Record” review of the official record of proceedings before the Local Liquor Commission. *Id.* The State Commission may only review the evidence found in the official record. *Id.* Bloomington has adopted a local ordinance requiring an appeal from an order of the Bloomington Commission to be a review of the official record. *Bloomington City Code, Section 38(A)*. Accordingly, the Commission will only review the evidence as found in the official record.

In reviewing the propriety of the order or action of the local liquor control commissioner, the State Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;

(c) Whether the findings are supported by substantial evidence in the light of the whole record.

235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission's duty is to determine whether the local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm'n*, 405 Ill. App. 3d 1071, 1080, (2<sup>nd</sup> Dist. 2010). The Court held that “[s]uch review mandated assessment of the discretion used by the local authority, stating that “[t]he function of the State commission, then, in conducting a review on the record of license suspension proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion.” *Id.*

**A. Whether the local liquor control commissioner has proceeded in the manner provided by law.**

Bloomington proceeded in a “manner provided by law” because it provided TED J with due process prior to imposing a fine against TED J’s liquor license. Bloomington gave TED J the required notice of the charges, an opportunity to be represented by counsel, and an opportunity to prepare a defense. Moreover, Bloomington relied on duly enacted local ordinances and underlying promulgated state law as the foundation of the charges against TED J.

TED J’s basis for this appeal is: 1) Bloomington improperly relied on Governor of Illinois Executive Orders<sup>1</sup> (“Executive Orders”) to form the bases of the Bloomington City Code violations because the Executive Orders do not constitute enforceable laws or regulations and; 2) if the Executive Orders do constitute enforceable laws, the Bloomington Commission does not have authority to enforce the Executive Orders. The State Commission has reviewed the

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<sup>1</sup> Executive Orders 2020-69, 2020-71, and 2020-73.

arguments of counsel and has determined that Bloomington has proceeded in a manner provided by law.

1. Illinois Governor Executive Orders have the force of law.

The Illinois Emergency Management Agency Act (“IEMAA”) gives the Governor the authority to restrict indoor occupancy levels upon the proclamation of a disaster. The first sentence of Section 7 of IEMAA declares: “In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists.” *20 ILCS 3305/7*. One of the bases for declaring a disaster in Section 4 of IEMAA is an “epidemic.” Per Section 4 of IEMAA, disaster is:

**“an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural, technological, or human cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, cyber incidents, or acts of domestic terrorism.”**

*20 ILCS 3305/4* (emphasis added). Section 7 authorizes the actions a Governor may take if a disaster occurs:

“In the event of a disaster, as defined in Section 4, the Governor may, by proclamation declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period not to exceed 30 days the following emergency powers; . . .

(8) To control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.”

*20 ILCS 3305/7(8)*.

Due to the increases in COVID-19 transmissions and illnesses in the last quarter of 2020 as detailed in the testimonials of the Executive Orders, the Governor declared a “disaster” as authorized by IEMAA. From this disaster proclamation, the Governor issued multiple Executive Orders to limit indoor occupancy in public eating and drinking establishments in high transmission regions. Effective November 4, 2020, Executive Order 2020-69 stated: “All restaurants and bars

in the region must suspend indoor on-premises consumption.” This Order applied to counties in Central Illinois where there was a spike in positivity rates including in McLean County, the County of Bloomington. *Executive Order, 2020-69, Section 1(a)*. Executive Order 2020-69 was replaced by Executive Order 2020-71 which extended the provisions of Executive Order 2020-69 through December 12, 2020. On November 20, 2020, because of a significant increase in statewide COVID-19 transmissions, the Governor issued a new statewide Executive Order 2020-73 with the following statement:

“All businesses that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—**may not allow in-person indoor consumption.**”

*Executive Order 2020-73 Section 3(f) (emphasis added)*. By way of Executive Order, the Governor exercised his authority granted to him by statute to restrict occupancy levels inside businesses in order to address and limit the impact of the COVID-19 epidemic. The State Legislature delegated the Governor such emergency authority through IEMAA, a validly enacted statute.

Under the authorization granted by IEMAA, the Governor’s Executive Orders have the force and effect of law. Contrary to the arguments of TED J, the Executive Orders are born out of emergency necessity requiring immediate action and greater flexibility that the executive branch of government provides. As stated in the Executive Orders, the restrictions placed on public movement and congregations are based on ever changing COVID-19 positivity rates that fluctuate over a 7-day rolling period. Because it is not practical for the legislature to be in perpetual session waiting to enact laws which change with the changing circumstances, the Legislature has reasonably granted the authority to restrict movement and occupancy to the Governor. Does it, therefore, make practical sense that the Legislature would grant the Governor emergency authority to declare a disaster and restrict occupancy, and for such executive actions not to have the force of

law? To the contrary, it is a legal absurdity to conclude that IEMAA would grant unenforceable legal authority to the Governor.

The Bloomington Commission offers support that the Executive Orders are enforceable laws of the State by citing the dictionary definition of the term “law” and other legal authority. The Bloomington Commission cites the Black’s Law Dictionary broad definition of “law” which includes many forms of promulgated rules including “gubernatorial proclamations.” *Bloomington Commission Pre-Trial Memorandum (internal citations omitted), p. 4*. Moreover, Bloomington includes cases and opinions which support the proposition that non-statutes can be considered law if they are authorized or emanate from statute and are not aspirational in nature. *Id.* [citing *Bulger v. Chicago Transit Authority*, 345 Ill. App. 3d 103, 119-21 (1<sup>st</sup> Dist. 2003)]. Bloomington also cites an Illinois Attorney General Opinion that argued the Governor had authority “to reduce or limit the use of funds appropriated to the Merit Board” by powers vested to the Governor by the Emergency Budget Act even though such emergency authority conflicted with another statute. *Opinion of the Illinois Attorney General, p. 9, December 23, 2013*. Such opinion stated the authority of the Governor “depend[s] on the existence of legislative enactments specifically authorizing such action.” *Id.* The Executive Orders at issue in this case emanate from the “legislative enactment” of Section 7(8) of IEMAA and impose affirmative duties on businesses to not allow indoor dining and drinking. Therefore, the Governor’s Executive Orders in this case have the effect of law.

Even the legal authority cited by TED J counsel on a similar matter (21 APP 04 – JSP Inc. v. Normal Liquor Commission) implies that an Executive Order emanating from statute could have the force of law. In *Buettell v. Walker*, the Court overruled a Governor’s Executive Order “noting that the order on its face purports to be the exercise by the Governor of an authority *independently*

*derived from the Constitution, and not the exercise of a delegated power.*” *Buettell v. Walker*, 59 Ill. 2d 146, 154 (1974) (emphasis added). The Court in *Buettell* overruled the enforcement of a Governor’s Executive Order because the Order exceeded the Governor’s authority to manage State agencies.<sup>2</sup> Implicit in the holding of *Buettell*, however, is that a Governor’s Executive Order *would* have the effect of law if the Executive Order was dependent on the “the exercise of delegated power.” In this case, the Executive Orders were the direct result of IEMAA granting the Governor the right to restrict building occupancy in disaster areas. *20 ILCS 3305/7(8)*. It is clear, therefore, the Executive Orders prohibiting indoor eating and drinking were properly delegated and have the force of law.

Both the State and Federal courts have definitively and repeatedly ruled that the Illinois Governor has authority under IEMAA to take all necessary executive and emergency action to control the spread of the COVID-19 virus. Such authority has been upheld even when the emergency actions infringe on constitutionally protected speech, religious, and assembly rights.<sup>3</sup> In the case of restricting indoor occupancy at a liquor licensed business, the courts refused to restrain the Governor’s actions to limit indoor dining and drinking. In *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, 161 N.E.3d 1190, the Court refused to grant a temporary restraining order to stop enforcement of Executive Order 2020-61 in which the business occupancy restrictions in Kane County in October 2020 were identical to the restrictions of the Executive Orders in this case. In denying a temporary restraining order, the *Fox Fire* court ruled that a future

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<sup>2</sup> In the 1970’s, Governor Walker attempted to enforce an Executive Order to prohibit certain political donations by private citizens or organizations that were governed by State Agencies.

<sup>3</sup>*Nowlin v. Pritzker*, 2021 U.S. Dist. LEXIS 29403, 2021 WL 669333, *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341, 2020 U.S. App. LEXIS 18862, 2020 WL 3249062., *Cassell v. Snyders*, 458 F. Supp. 3d 981, 2020 U.S. Dist. LEXIS 77512, 2020 WL 2112374, *Vill. of Orland Park v. Pritzker*, 475 F. Supp. 3d 866, 2020 U.S. Dist. LEXIS 136833, 2020 WL 4430577., *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 2020 U.S. App. LEXIS 28118, 2020 WL 5246656.

challenge to such an order was not likely to succeed on its merits. In declining to overturn the Governor's actions in 2020 related to controlling the spread of COVID-19, courts have agreed the Executive Orders have the force of law.

2. The Bloomington Commission has the authority to enforce its own liquor ordinances that require license holders to comply with State law.

The Bloomington City Code requires retail license holders to abide by local ordinances that are part of the City Code but also requires compliance with other laws, including State laws. The Bloomington City Code states that a licensee can be sanctioned for violating state law. *Bloomington City Code, Section 37(E)(3)*. Moreover, the City Code broadly requires license holders to abide by "all codes and regulations pertaining to health and safety applicable within the City" *Bloomington City Code, Section 37(E)(4)*. This could include pandemic related Executive Orders applicable within Bloomington. Although not part of the Order, Bloomington counsel also argues that Section 43 of the Code incorporates the rules of the State Commission into the Code and such State Commission Rules also require license holders to abide by State law. *Bloomington Pre-Trial Memorandum, p. 2*.

As argued, the Executive Orders constitute State laws. Because the Executive Orders restrict occupancy and indoor eating and drinking, the Executive Orders constitute State law pertaining to the operation of the licensed business. The Executive Orders are also State law pertaining to health and safety within the Town of Bloomington. Evidence offered by the Bloomington Commission at a hearing proved TED J violated the Executive Orders and the Bloomington City Code by allowing customers to eat and drink within its establishment during the effective dates of the Executive Orders.



While TED J argues that the Bloomington Commission has no authority to enforce the Executive Orders even if the Executive Orders have the force of law, this argument does not have merit. The Bloomington Commission has cited TED J with a violation of Bloomington City Code Sections 37(E)(3) and 37(E)(4). The Bloomington Council has determined that it desires its liquor license holders to follow all Federal and State laws. The Executive Orders at issue are, in fact, State laws. Pursuant to its own local ordinances, therefore, the Bloomington Commission has the right and the duty to hold its licensees accountable to its own duly enacted ordinances. By enforcing its own ordinances, the Bloomington Commission has held TED J accountable for violating the Executive Orders but is not, *per se*, enforcing the Executive Orders.

**B. Whether the order is supported by the findings**

In reviewing whether the order is supported by the findings, this Commission analyzes whether the findings contained within the local order constitute grounds to fine the license. The Illinois Appellate Court has ruled that, as a reviewing body, “[t]he issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute.” *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966 (1<sup>st</sup> Dist. 1996).

The order contains sufficient findings of fact and conclusions of law from which to base the ultimate decision. After a hearing, the Bloomington Commissioner found TED J to have violated the Executive Orders and Sections 37(E)(3) and 37(E)(4) of the Bloomington City Code because it “allowed on premise, indoor consumption in violation of EO69 and EO73 on November 28, 2020.” *Local Order*, p. 3-4. Allowing indoor eating and drinking was clearly in violation the

Executive Orders and, thus, the Bloomington City Code. The order to fine TED J for the violation is not unreasonable or arbitrary and is supported by the findings.

**C. Whether the findings are supported by substantial evidence in the light of the whole record.**

Finally, this Commission must review whether the findings are supported by substantial evidence in the light of the whole record. The findings that TED J violated the Executive Orders and Bloomington City Code are sufficiently supported by the evidence in the record. “Upon review, an agency's findings of fact are held to be prima facie true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence.” *Daley v. El Flanboyan Corp.*, 321 Ill. App. 3d 68, 71, (1<sup>st</sup> Dist. 2001).


At a hearing, the Bloomington Commission presented testimony TED J had permitted indoor dining on November 28, 2020 in violation of the Executive Orders. A Bloomington police officer testified he had visited the TED J licensed premises on November 28, 2020 and observed people inside the premises many of which were eating and drinking. An employee of the business was present during the officer’s observation. *Local Transcript, p. 19*. The Executive Order in place at the time expressly prohibited bars and restaurants from allowing indoor consumption of food and beverages. Because the TED J violated the Executive Order, it also violated local ordinances. Therefore, the local record contains substantial evidence to support the findings.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Bloomington Local Liquor Commission is

AFFIRMED.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on January 19, 2022.



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Cynthia Berg, Chairman



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Melody Spann Cooper, Commissioner



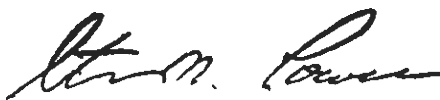
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Julieta LaMalfa, Commissioner



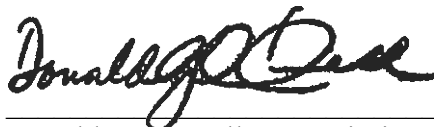
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Thomas Gibbons, Commissioner



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Steven Powell, Commissioner



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Donald O'Connell, Commissioner



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Patricia Pulido Sanchez, Commissioner

THIS IS A FINAL ORDER

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such Petition is a jurisdictional prerequisite to the Administrative Review.

STATE OF ILLINOIS                    )  
COUNTY OF COOK                    ) 21 APP 01

UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: March 17, 2022.

*/s/ Richard Haymaker*

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Richard Haymaker

TED J Inc.  
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Local Liquor Commissioner for Bloomington, Illinois  
c/o George Boyle, esq.  
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