

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

JSP LLC
305 S. VETERANS PARKWAY, STE 230
NORMAL, IL 61761-7603

Illinois Lic. 1A-0087900

Appellant,

vs.

NORMAL LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 21 APP 04

FINAL ORDER

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 JSP, LLC, Appellant (hereinafter “JSP”), the State Commission being otherwise fully informed and a majority of its members do hereby state the following:

Procedural History

The Normal Liquor Control Commission (“Normal Commission”) issued a “Complaint and Citation” to JSP on December 15, 2020. The charges contained in the Complaint and Citation alleged JSP violated the Town of Normal Liquor Code (“Normal Liquor Code”). A hearing was held on January 5, 2021, before hearing officer Todd Greenburg, appointed by Mayor Chris Koos (“Normal Liquor Commissioner”). On February 1, 2021, the Normal Liquor Commissioner entered an order that JSP had violated Sections 4.3, 4.4(D)(5)(a), and 4.4(D)(5)(d) of the Normal Liquor Code and for JSP to pay three fines for three separate violations of the Normal Liquor

Code. JSP filed an appeal with the State Commission on February 11, 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 Normal Commission decision to issue a total fine of \$4,170 (\$1,000, \$1,500, and \$1,670) for three separate violations of the Normal Liquor 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.* Normal has adopted a local ordinance requiring an appeal from an order of the Normal Commission to be a review of the official record. *Normal Liquor Code, Section 4.18(E)(3)*. 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, (2nd 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. Koehler*, 405 Ill. App. 3d at 1080 (2nd Dist. 2010).

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

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

JSP's basis for this appeal is: 1) Normal improperly relied on Governor of Illinois Executive Orders¹ ("Executive Orders") to form the bases of the Normal Liquor Code violations because the Executive Orders do not constitute enforceable laws or regulations; 2) If the Executive Orders do constitute enforceable laws, the Normal Commission does not have authority

¹ Executive Orders 2020-69, 2020-71, and 2020-73.

to enforce the Executive Orders; and, 3) Normal exceeded its authority to fine JSP by imposing excessive costs. The State Commission has reviewed the arguments of counsel and has determined that Normal 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.” 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 Normal. *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 JSP, 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 Normal 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 Normal Commission cites the Black’s Law Dictionary broad definition of “law” which includes many forms of promulgated rules including “gubernatorial proclamations.” *Normal Commission Pre-Trial Memorandum (internal citations omitted)*, p. 6. Moreover, cases cited by the Normal Commission 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.*, at p. 4 [citing *Bulger v. Chicago Transit Authority*, 345 Ill. App. 3d 103, 119-21 (1st Dist. 2003)]. The Executive Orders at issue in this case emanate directly from Section 7(8) of IEMAA and impose affirmative duties on businesses to not allow indoor dining and drinking.

Even the legal authority cited by JSP implies that an Executive Order emanating from statute could have the force of law. In the case cited by JSP, *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.² 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

² 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.

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.³ 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 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 Normal Commission has the authority to enforce its own liquor ordinances that require license holders to comply with State law.

The Village of Normal Liquor Code requires retail license holders to abide by local ordinances that are part of the Village Code but also requires compliance with other laws, including

³*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.

State laws. The Normal Liquor Code prohibits licensee holders from selling alcoholic liquor in violation of the “laws of the State of Illinois.” *Normal Liquor Code, Section 4.3*. Furthermore, the Normal Liquor Code authorizes the Normal Commission to assess fines against a liquor license holder if the license holder has “violated any Town ordinance, State or Federal law.” *Normal Liquor Code, Section 4.4(D)(5)(a)*. Moreover, the Liquor Code broadly requires license holders to abide by “all codes and regulations pertaining to health and safety applicable within the Town of Normal.” *Normal Liquor Code, Section 4.4(D)(5)(d)*. This could include State laws pertaining to health and safety applicable within Normal.

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 Normal. Evidence offered by the Normal Commission at a hearing proved JSP violated the Executive Orders and the Normal Liquor Code by allowing customers to eat and drink within its establishment during the effective dates of the Executive Orders.

While JSP argues that the Normal 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. At the local hearing, JSP asked “does a local Liquor Commissioner have the authority under Illinois law to enforce an Executive Order?” *Local Transcript, p. 15*. This question, however, betrays the fact that the Normal Commission is not *per se* enforcing the Executive Orders. The Normal Commission has cited JSP with a violation of Normal Village Code Sections 4.3, 4.4(D)(5)(a) and 4.4(D)(5)(d). The Normal Town 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 Normal Commission has the right and the duty to hold its licensees accountable to its own duly enacted ordinances. By enforcing its own ordinances, the Normal Commission has held JSP accountable for violating the Executive Orders but is not, *per se*, enforcing the Executive Orders.

3. Under the Normal Liquor Code and Illinois Liquor Control Act, the Normal Commission was authorized to assess fines in maximum amounts against JSP.

The Normal Commission is authorized to assess fines against license holders for violations of local ordinance and other laws. Per the “**Powers of the Local Liquor Commissioner**” of the Normal Liquor Code, the Normal Liquor Commissioner is authorized “to fine license holders” for violations of law. *Normal Liquor Code, Section (D)(5)(a)*. The Normal Liquor Code is consistent with State law authorizing a local commission to assess fines not to exceed maximum amounts for violations of a law. Per the Illinois Liquor Control Act:

“In addition to the suspension, the local liquor control commissioner in any county or municipality may levy a fine on the licensee for such violations. The fine imposed shall not exceed \$1000 for a first violation within a 12-month period, \$1,500 for a second violation within a 12-month period, and \$2,500 for a third or subsequent violation within a 12-month period.”

235 ILCS 5/7-5.

In this matter, the Normal Commission has not exceeded its statutory authority under State law to assess fines against a licensee for license violations. The Normal Commission assessed a “total fine” of \$1,000 for JSP’s November 6, 2020, violation (first violation); a “total fine” of \$1,500 for JSP’s November 13, 2020, violation (second violation); and a “total fine” \$1,670 for JSP’s December 11, 2020, violation (third violation). *Order A (1-3), p. 3*. All three fines are within the maximum fine amounts established by the Illinois Liquor Control Act and are authorized by the Normal Liquor Code. Even though the Local Order references that the “total fine” includes

court costs and JSP raises the issue that the Normal Liquor Code requires that court costs be equally shared, this does not change the fact that Normal still has the authority to max out or nearly max out its fines for license violations. As long as Normal did not exceed the statutory fine maximums, they acted according to law.

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 (1st Dist. 1996).

The order contains sufficient findings of fact and conclusions of law from which to base the ultimate decision. After a hearing, the appointed Normal hearing officer found JSP to have violated the Executive Orders and Sections 4.3, 4.4(D)(5)(a), and 4.4(D)(5)(d) of the Normal Liquor Code by “allow[ing] the licensed premises to be used for indoor on-premises consumption” on November 6, 2020, November 13, 2020, and December 11, 2020. *Order, pp. 2-3*. Allowing indoor eating and drinking was clearly in violation the Executive Orders and, thus, the Normal Liquor Code. The order to fine JSP for each violation does not exceed the statutory maximum fines per violation. Therefore, the order fining JSP for three separate offenses 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 JSP violated the Executive Orders and Normal Liquor 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, (1st Dist. 2001).

At a hearing, the Normal Commission presented testimony JSP had permitted indoor dining on the days in question in violation of the Executive Orders. A Normal police officer testified he had visited the JSP licensed premises on November 6, 2020, and observed approximately 55 people inside the premises many of which were eating and drinking. The owner of the business was present during the officer’s observation. *Local Transcript, pp. 29-32*. Another police officer testified that he visited the licensed location twice on November 13, 2020, and observed approximately sixteen people eating and drinking in the establishment on one visit and observed six people inside the licensed premises on another visit. The officer testified he had conversations with the manager during his visit. *Local Transcript, pp 40-45*. For the last charge, a third officer testified he visited the JSP licensed premises on December 11, 2020, and observed approximately ten persons inside the business at the bar and at tables eating and drinking. This officer also testified to a conversation he had with the business manager. *Local Transcript, pp. 52-55*. The Executive Orders in place at the time expressly prohibited bars and restaurants from allowing indoor consumption of food and beverages. Therefore, the local record contains substantial evidence to support the findings.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Normal Local Liquor Commission is
AFFIRMED.

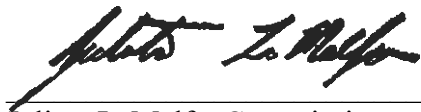
ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on January 19, 2022.




Cynthia Berg, Chairman



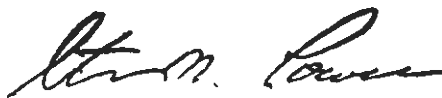
Melody Spann Cooper, Commissioner



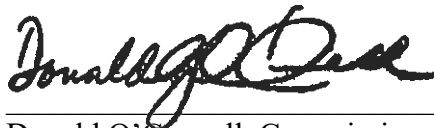
Julieta LaMalfa, Commissioner



Thomas Gibbons, Commissioner



Steven Powell, Commissioner



Donald O'Connell, Commissioner



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.

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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

Richard Haymaker

JSP Inc.
c/o Tom DeVore, esq.
tom@silverlakelaw.com

Local Liquor Commissioner for Normal, Illinois
c/o Brian Day, esq.
bday@normal.org