

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

JOLIET CITGO, INC.
609 RUBY ST., JOLIET, IL 60435

Illinois Lic. N/A

Appellant,
vs.
JOLIET LIQUOR CONTROL COMMISSION

Appellee.

Case No.: 21 APP 19

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 Joliet Citgo, Inc., Appellant (hereinafter “Citgo”), the State Commission being otherwise fully informed, a majority of its members do hereby state the following:

Procedural History

On or about October 8, 2020, Citgo applied for a Joliet Class BG¹ liquor license permitting the off-premises sales of beer and wine and the on-premises consumption of beer and wine in conjunction with video gaming at 609 Ruby Street, Joliet, Illinois. On November 25, 2020, members of the Joliet Liquor Control Commission (“Joliet Commission”) held a license application hearing. On September 24, 2021, the Joliet Local Liquor Commissioner signed an order denying the application of Citgo for a Joliet Class BG liquor license. On October 5, 2021, the Joliet City Council adopted Council Memo #464-21 to deny Citgo’s Class BG liquor license application. The denial order was served on an agent of Citgo on October 8, 2021. Citgo filed an

¹ Citgo initially applied for a Class C liquor license authorizing the sale of alcoholic liquor in its original package for off-premises consumption. *ILCC* at 4, 21, 60. At an indeterminate point after the November 25, 2020, hearing Citgo asked and was allowed to amend its application to request a BG liquor license. *ILCC* at 62, 67 ¶2.

appeal with the State Commission on October 26, 2021. On February 24, 2022, the State Commission, represented by Chair Cynthia Berg and Commissioner Thomas Gibbons, heard on the record arguments of counsel on the matter. The State Commission as a whole reviewed the entire record and deliberated on the matter at the April 20, 2022, State Commission meeting.

Decision

Upon review of the entire certified record, the State Commission AFFIRMS the Joliet Commission decision to deny the issuance of a Class BG liquor license to Citgo.

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.* Joliet has adopted a local ordinance requiring an appeal from an order of the Joliet Commission to be a review of the official record. *Joliet Liquor Code, Section 4.13(e), ILCC at 29*. 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 in that case 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.*

Citgo's basis for this appeal is: 1) the Joliet Commission acted arbitrarily in denying Citgo's application for a liquor license due to its general aversion to providing liquor licenses to gas stations, and; 2) the factual findings of the Joliet Commission did not support the denial of the liquor license. The State Commission has reviewed the arguments and has determined that the Joliet Commission did not abuse its discretion in denying the application of Citgo for a Class BG liquor license.

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

The Joliet Commission acted in a manner provided by law by providing Citgo with the minimum due process to seek a liquor license. In reviewing the actions of a local liquor commission, the State Commission must review whether the local liquor commission offered appropriate process in arriving at its decision. Upon a review of the record in this case, the Joliet Commission satisfied the minimum requirements of law in the review and disposition of Citgo's liquor license application.

Although the Liquor Control Act does not provide for a process by which a hearing is to occur for an application, the Joliet City Code provides for an application hearing process. The Code requires a hearing to take place within 30 days of the application. The City Code further requires that the City Council be notified, and that the City Council determine that the issuance of the license is in the best interest of the city. Following the review by the City Council, the Joliet Commissioner is to issue an order consistent with the review conducted by the City Council. *ILCC at 32-33.*

In this case, the Joliet Commission proceeded in the manner provided by law. Citgo filed a Class BG liquor license application and Joliet held a hearing on the application on November 25, 2020. *ILCC at 21-24.* Following the hearing, the Joliet Commissioner issued his findings and signed an order denying the Citgo Class BG liquor license application. *ILCC at 67-69.* On October 5, 2021, the Joliet City Council adopted Council Memo #464-21 to deny the Citgo Class BG liquor license application. *ILCC at 12-13.* The Joliet Commission grounded its decision to deny the liquor license in Sections of the Joliet Code which authorize the Joliet Commission to consider various criteria, including: 1) 4-13(c)(9) - the number, class, and type of licensed premises within a one mile radius of the proposed licensed premises; 2) 4-13(c)(10) - the zoning, general character of the surrounding neighborhood, and the projected impact of the premises upon the surrounding neighborhood and the city as a whole; and, 3) 4-13(c)(11) - the law enforcement problems, if any, which would be created by the opening of the premises. *ILCC at 67-69.* A review of the record demonstrates that the Joliet Commission proceeded in a manner provided by 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, suspend, or revoke

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).

In this case, the order contains sufficient findings of fact and conclusions of law from which to base the ultimate decision. The Joliet Commission issued an order consistent with the findings in the record because the final denial order was sufficiently supported by the findings of the application record. In the order denying the license the Joliet Commissioner issued the following findings: that Citgo filed an application for a Class BG license located at 609 Ruby Street, Joliet; the “property consists of a brick structure which is used as a convenience store (proposed premise) which supports the sale of motor fuel from several fuel pumping islands;” the property is “zoned for business, however the surrounding area is a large residential neighborhood;” “a review of licensed premises within a one mile radius reveals that there are 14²,” “a review of police department records from the past year reveals that there were 29 calls for police service” at the premises; there was “evidence received which indicated that 87.5% of residents who responded to a survey (56 of 64) were opposed to the issuance of a liquor license at this location.” *ILCC at 67-68*. Based on these findings, the Local Commissioner found there was just cause to deny a liquor license to Citgo, stating:

The proposed premise (609 Ruby Street) backs up to a residential area. The proposed premise, as well as its immediate vicinity is the locus of frequent calls for police service. Area residents voiced opposition to the issuance of the license. The issuance of a liquor license at this location, regardless of class, will likely have a

² While the Joliet Commission Order states there are 14 liquor licensed premises within a one-mile radius, the Findings indicate that there are 12. *ILCC at 68, 121, and 123*.

negative impact on the surrounding neighborhood, as well as the city as a whole. The issuance of a liquor license at this location will likely exacerbate the already existing law enforcement problems. Based on the foregoing Findings of Fact, the Commissioner hereby concludes that there exists just cause to deny the application for the issuance of a liquor license.

ILCC at 68.

The Joliet Code authorizes the Joliet Commissioner to consider a number of factors in determining whether the issuance of a license is in the best interests of the city. *ILCC at 28-29.* In this case the Joliet Commission focused on three factors in denying the liquor license: 1) the number, class, and type of licensed premises within a one mile radius of the proposed licensed premises [4-13(c)(9)]; 2) the zoning, general character of the surrounding neighborhood, and the projected impact of the premises upon the surrounding neighborhood and the city as a whole [4-13(c)(10)]; and, 3) the law enforcement problems, if any, which would be created by issuing the license [4-13(c)(11)]. *ILCC at 67-69.* The findings of the Joliet Commissioner do contain sufficient evidence as to why the issuance of a license to Citgo supports a reasonable conclusion that such license would have a negative impact on the community. Therefore, the Order of the Joliet Commission 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. In this case, there is substantial evidence in the record demonstrating that the issuance of the Class BG license to Citgo would likely have a negative impact on the surrounding neighborhood and exacerbate already existing law enforcement problems. “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). “An

administrative agency's decision is not against the manifest weight of the evidence and must be sustained on judicial review if there is *any* evidence in the record that fairly supports the agency's decision." *Id.* (emphasis added).

Citgo argues that the "the record and findings of the Joliet Liquor Commission do not support denial of the license" and notes that the Applicant: "had been associated with the sale of alcoholic beverages for over seven years;" "was of good character;" and, "owed no money to the City." *ILCC at 142-143*. In addition, Citgo notes that both the Building Department and the Chief of Police did not object and the premises are zoned as B-1 Neighborhood Business District. *ILCC at 143*.

The Joliet Commissioner found that "[t]he proposed premise (609 Ruby Street) backs up to a residential area." *ILCC at 68*. This finding is supported by substantial evidence. Joliet Planning Division maps and documents entered into evidence at the hearing clearly demonstrate that the surrounding land uses include residential areas to the north and west, commercial to the east and south, the surrounding zoning in the vicinity is R-2 single-family to the north, and B-1 neighborhood business to the east and south. *ILCC at 56-58, 121*.

The Joliet Commission also found that "the proposed premise, as well as its immediate vicinity is the locus of frequent calls for police service" and "[t]he issuance of a liquor license at this location will likely exacerbate the already existing law enforcement problems." *ILCC at 68*. The record indicates that there were 29 calls for police service at Citgo during a one-year period from September 2020 to August 2021. *ILCC at 74-119*. Some of these calls were made by Citgo and concerned minor issues such as a dispute over accepting dirty change (*ILCC at 108*) or a false alarm (*ILCC at 83*), yet other calls concerned a battery (*ILCC at 117-119*), suspected narcotics

activity (*ILCC at 116*), people with weapons (*ILCC at 100-101*), individuals causing disturbances (*ILCC at 90-91, 92-93, 104-105*), and a person with a gunshot wound (*ILCC at 87-89*).

Citgo notes that “the Joliet Police Chief and City Planner both presented evidence favoring the approval of the liquor license.” *ILCC at 147*. It is undisputed, however, that there were 29 calls for police service at Citgo over the course of one year. Each of these calls for police service involved from one to six responding officers. *ILCC at 74–119*. In addition, there were comments submitted by the Cunningham Neighborhood Council expressing public safety concerns related to the issuance of a liquor license to Citgo. *ILCC at 132, #8; 133, ##15, 19*. Therefore, based on the number of calls for police service and comments received it is reasonable for the Local Commissioner to conclude that issuing a liquor license at this location would likely exacerbate existing law enforcement problems, despite the fact that the Police Chief did not object.

The Joliet Commission further found that “[a]rea residents voiced opposition to the issuance of the license. The issuance of a liquor license at this location, regardless of class, will likely have a negative impact on the surrounding neighborhood, as well as the city as a whole.” *ILCC at 68*. At the hearing on November 25, 2020, an email and survey taken by the Cunningham Neighborhood Council concerning the issuance of a liquor license to Citgo was entered into evidence, along with twenty-five responses from community members. *ILCC at 59, 130-134*. Of the sixty-four responses to the survey, eight were in support of the issuance of a liquor license to Citgo, while fifty-six were opposed. *ILCC at 59, 130*. Additionally, fifteen of the twenty-five individuals who responded with comments expressed concerns about an over concentration of liquor stores in the area, while three comments were related to public safety issues and police calls for service at the Citgo premises. *ILCC at 131-134*. Taken as a whole, there is substantial evidence

in the record to support the finding that the issuance of a license to Citgo would likely have a negative impact on the surrounding neighborhood.

Finally, Citgo contends that the comments made by the Joliet Commissioner at the October 4, 2021, City of Joliet “pre-council meeting” demonstrate that the “Liquor Commissioner did not consider any of the evidence presented at the hearing.” *ILCC at 145*. At that meeting the Joliet Commissioner stated:

Just so we are clear, I have said this to a couple of other applicants that have come forward. My office has been consistent. . . . *I have denied all of these licenses, I think they are a bad idea*. It started with Thornton’s at Collins and Jackson Street. We have had other east side establishments and west side establishments want to do it. *It’s not personal, it’s not a reflection of you or your business. It’s just my opinion and the Liquor Commissioner’s opinion that these are bad for Joliet. That’s why I stayed consistent and denied them consistently, just want to let you know.*” (Emphasis added).

(Public Record, October 4, 2021 pre-council meeting; available for viewing at https://joliet.granicus.com/player/clip/4085?view_id=6&redirect=true at 27:50)

While “there is a presumption that administrative decision makers are ‘men of conscience and intellectual discipline’ who are able to objectively and fairly judge each particular case on its own facts and set aside their own personal views, a claimant may show bias or prejudice ‘...if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it.’” *Danko v. Bd. of Trustees of Harvey Pension Bd.*, 240 Ill. App. 3d 633, 641 (1st Dist. 1992). “A claimant must show more than the mere possibility of bias or that the decision maker is familiar with the facts of the case. The claimant must demonstrate that the decision maker is not ‘capable of judging a particular controversy fairly on the basis of its own circumstances.’” *Danko*, 240 Ill. App. 3d at 641. Furthermore, “a decision maker is not disqualified ‘simply because he has taken a position,

even in public, on a policy issue related to the dispute.” *Wolin v. Dep’t. of Fin. & Prof’l Regulation*, 2012 IL App (1st Dist.) 112113.

In this case, a disinterested observer could conclude that the Local Commissioner’s remarks at the October 4, 2021, hearing did not show bias or prejudice because the findings are supported by substantial evidence in light of the whole record. Therefore, the local record contains substantial evidence to support the findings.

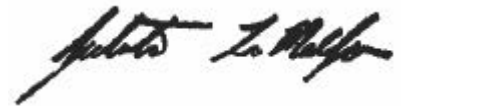
IT IS HEREBY ORDERED:


For the reasons stated herein, the decision of the Joliet Commission is AFFIRMED.

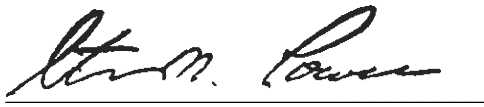
ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on April 20, 2022.


Cynthia Berg, Chairman


Melody Spann Cooper, Commissioner


Julieta LaMalfa, Commissioner


Thomas Gibbons, Commissioner


Steven Powell, Commissioner


Brian Sullivan, 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 19

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: June 13, 2022

/s/ Richard Haymaker

Richard Haymaker

Joliet Citgo, Inc.
c/o Jordan Kielian, Esq.
jkielian@msclawfirm.org

Local Liquor Commissioner for Joliet, Illinois
c/o Chris Regis, Esq.
cregis@joliet.gov