

**STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION**

ANDY’S SUBS 1, INC.

Case No.: 20APP01

119 ILLINOIS HIGHWAY 169, KARNAK, IL  
62956

**FINAL ORDER**

Appellant,  
vs.  
PULASKI COUNTY, ILLINOIS

Appellee.

**FINAL ORDER**

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “the Commission”) upon the appeal of ANDY’S SUBS 1, INC, Appellant, (hereinafter “Andy’s”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

**Procedural History**

On or about January 2, 2020, Andy’s submitted to the Local Liquor Commission for Pulaski County, Illinois (hereinafter Pulaski County) an application for a local liquor license for the premises located at 119 Illinois Highway 169, Karnak, IL 62956. On January 16, 2020, Pulaski County denied Andy’s application for a local liquor license. Pulaski based the denial in the fact Andy’s was within 100 feet of a place of worship and/or a school in violation of Section 6-11 of the Liquor Control Act, 235 ILCS 6-11. On January 17, 2020, Andy’s filed this appeal with the Commission. On August 7, 2020, Pulaski County filed a Response of Appellee. The matter was reviewed by the Commission at its regular meeting held on August 13, 2020. Pulaski County was represented by Pulaski County State’s Attorney James Flummer and Andy’s was represented by attorney Mark Clarke.

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 Commission may only review the evidence found in the

official record. Id. As of the date of the order in question, Pulaski County, Illinois had not adopted an “On the Record” ordinance. Accordingly, the Commission will review this matter De Novo. However, Pulaski County in its “Response of Appellee” indicated that it would not be presenting any evidence nor opposing Andy’s request for the reversal of the Pulaski County order. Accordingly, Pulaski County has waived holding a hearing on this matter.

### **Summary of Evidence**

The evidence presented to the Commission in this matter is based on the filings submitted by the parties. The evidence reflects that on January 16, 2020, Pulaski County denied Andy’s application for a license based on its determination that the property was within 100 feet of a school/church in violation of Section 6-11 of the Liquor Control Act, 235 ILCS 5/6-11. On August 7, 2020, Pulaski submitted its “Response of Appellee” in which Pulaski indicated that upon further review, there is no evidence which indicates Andy’s is situated within 100 feet of a church/school. Pulaski further indicated that it would not be presenting any evidence nor opposing Andy’s request for the reversal of the Pulaski order.

### **Discussion**

In reviewing propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control 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 local agency abused its discretion. Koehler v. Illinois Liquor Control Comm'n, 405 Ill. App. 3d 1071, 1080, (2010). “Such review mandated assessment of the discretion used by the local authority, stating that “[t]he functions 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.”

Pulaski County has indicated that upon further review they have no evidence to present to the Commission to support their decision. Accordingly, the findings are not supported by

substantial evidence in light of the whole record. Therefore, we reverse the decision of Pulaski County.

**IT IS HEREBY ORDERED:**

For the reasons stated herein, the decision of the Local Liquor Commissioner for Pulaski County, Illinois denying ANDY'S SUBS 1, INC.'s application for licensure for the premises located at 119 Illinois Highway 169, Karnak, IL 62956 is reversed. The Local Liquor Commissioner for Pulaski County, Illinois shall take such action so as to conform with this order by issuing a local liquor license to ANDY'S SUBS 1, INC for the premises located at 119 Illinois Highway 169, Karnak, IL 62956.

**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.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois on August 21, 2020.

*Cynthia A. Berg*

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Cynthia Berg, Chairman

*Melody Spann Cooper*

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Melody Spann Cooper, Commissioner

*Thomas W. Gibbons*

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Thomas Gibbons, Commissioner

*Julieta LaMalfa*

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Julieta LaMalfa, Commissioner

*Steven M. Powell*

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Steven Powell, Commissioner

*Donald O'Connell*

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Donald O'Connell, Commissioner

*Pat Pulido Sanchez*

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Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS                    )  
COUNTY OF COOK                    ) 20APP01

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: August 21, 2020.

  
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Abraham Zisook

Andy's Subs 1, Inc..  
C/O Mark Clarke  
Mark.clarke@usa.net

Hon. Rex Wilburn  
Local Liquor Commissioner, Pulaski County, Illinois  
C/O State's Attorney James Flummer  
jflummer@pulaskicountyil.gov