

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

AUSTIN KNOOB dba Saluki Bar/Levels
Premises Located at:
760 East Grand Ave, Carbondale, IL
Appellant,
vs.
CARBONDALE, IL
Appellee.

Case No.: 20APP11

License Number: 1A-1128450

ORDER

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 AUSTIN KNOOB dba Saluki Bar/Levels, Appellant, (hereinafter “Appellant”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

Appellant is the holder of local liquor license issued by the City of Carbondale, Illinois, local license number B2-10G, for the property located at 760 East Grand Ave, Carbondale, IL. Appellant is the holder of a Retailer license issued by the Commission, license number 1A-1128450. On or about June 4, 2020, John M. Henry in his role as the Chairperson of the Local Liquor Commissioner for the City of Carbondale, Illinois, issued an Order, case number 2020-03, pursuant to Section 2-2-3(B) of the Carbondale Revised Code summarily suspending Saluki Bar for the period of June 4, 2020 through June 9, 2020. A hearing was held before Hearing Officer Brad Olson on behalf of the Carbondale Local Liquor Control Commission on June 8, 2020. On June 20, 2020, Hearing Officer Olson issued a report and recommendation to the Carbondale Local Liquor Control Commission. The Carbondale Local Liquor Commission met on August 25, 2020, to hear additional testimony on the case. On August 25, 2020, the Carbondale Local Liquor Commission (hereinafter “Appellee”) entered an order revoking the local liquor license for Appellant. On August 27, 2020, Appellant filed its appeal with the Commission of the final decision of the Appellee. The matter was continued from on multiple occasions. A hearing was held before the Commission on March 23, 2021. Chair Cynthia Berg and Commissioner Melody Spann-Cooper presided over the hearing. Appellant was represented

by attorneys Sean O’Leary and Michael Wepsiec¹. Appellee was represented by City Attorney Jaime Snyder. The Commission deliberated the matter on April 21, 2021.

Discussion

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 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. The City of Carbondale has adopted as part of the Carbondale Revised Code an ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. CRC §2-2-3(1) and (J). 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 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.”

¹ Saluki Bar was originally represented in this matter by attorney Alfred E. Sanders Jr. Mr. Sanders unexpectedly died on February 13, 2021, after the matter was already set for hearing before the Commission. Saluki Bar was given the opportunity to postpone the hearing but opted to proceed as scheduled with new counsel.

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

In reviewing the actions of a local liquor commission, the 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, we find that Appellee did not follow the appropriate procedure and processes. Appellant raises several issues on appeal:

i. Necessity of a Court Reporter

Appellant raises the concern that Carbondale has not proceed in the manner provided by law in that Carbondale did not present this Commission with an official record taken and prepared by a certified shorthand reporter. Carbondale admits that it did not utilize the services of a court reporter at the hearings. Instead Carbondale recorded the hearings and a transcript was produced by a certified shorthand reporter. ILCC Hearing Transcript at 24. Appellant's argument is rooted in Appellant's interpretation of Section 7-9 of the Liquor Control Act. 235 ILCS 5/7-9. Section 7-9 states in pertinent part: "If such resolution is adopted, a certified official record of the proceedings taken and prepared by a certified court reporter or certified shorthand reporter..." Appellant contends that the transcript must be prepared by a certified shorthand reporter prepared in a contemporaneous manner. Appellant therefore posits that by producing a transcript from a recording, the Commission is barred from reviewing the decision and must reverse the local liquor commission's decision.

The City of Carbondale has adopted as part of the Carbondale Revised Code an ordinance which requires any appeal from an order of the Local Liquor Commissioner to be a review of the official record. CRC §2-2-3(1) and (J). The Commission acknowledges that a court reporter was not present to take a contemporaneous transcription of the hearing. However, a recording was made of the hearing. Following the filing of this appeal, a court reporter subsequently transcribed the hearing and prepared the transcript for which the Commission could review. As a transcription of the record was made available to the Commission, there is no reason to reverse this matter based on the lack of the contemporaneous use of a court reporter.

In fact, this Commission and the Illinois Appellate court has already decided this issue. In Carbondale, Ill., Local Liquor Control Comm'n v. Illinois Liquor Control Comm'n, 84 Ill. App. 3d 325, 405 N.E.2d 433 (1980), the Commission reviewed an order issued by the Local Liquor Commissioner for the City of Carbondale, IL which lacked a transcript or record of proceeding.

The Commission determined that since no transcript existed, a de novo hearing should be held. The Appellate Court affirmed this decision. However, that Carbondale case differs from the present case for two reasons. In the Carbondale case from 1980, the Liquor Control Act included an option to hold a De Novo review when the record was not kept. That language has been removed from the Liquor Control Act. As such, the only remedy in this matter would be reversal of the order and not a De Novo hearing before the Commission. Additionally, in the Carbondale case from 1980, no record was kept in any form. In this case, the Appellee recorded the hearing, ordered a transcript prepared by a certified shorthand reporter, and has complied with the record requirement.

Additionally, this Commission has recently ruled on this specific issue in the case of *Stretch's Bar and Grill Corporation v. Waukegan*, 19CA02 (November 13, 2020). In *Stretch's* as here, no contemporaneous transcript was taken, however, a transcript was prepared from the recording for this Commission to review and we ruled that this transcript satisfied the official record of proceedings requirement.

Accordingly, the Commission finds that Appellee complied with the "On the Record" requirement.

ii. Structure of the Carbondale Local Liquor Commission

Appellant raises concerns that the structure of the Carbondale Local Liquor Control Commission violates the Carbondale form of government. The essence of Appellant's argument is that Carbondale is a home rule community which operates under a managerial form of government pursuant to 65 ILCS 5/3—6. As a managerial form of government, the city council's powers are limited to legislative powers and do not involve administrative duties as well.

The Liquor Control Act places the authority to serve as the local liquor commissioner in the hands of the mayor of each city. 235 ILCS 4-2. However, the Liquor Control Act does not limit the ability to serve as the local liquor commissioner to the mayor. The Liquor Control Act expressly contemplates the appointment of others as a local liquor control commission. Section 4-6 of the Liquor Control Act states: "When, in this Act, the local liquor control commissioner shall be referred to, it shall include any committee or other agency appointed by such local liquor control commissioner." 235 ILCS 5/4-6. As such, there is no issue if a separate committee is formed to serve as the local liquor regulatory authority. The Carbondale Revised Code created the Carbondale Local Liquor Control Commission. The Commission is made up of the mayor

and those City Council members who have not applied for or hold a Class A local liquor license. CRC §2-2-1. Appellant argues that since there is an overlap between the local liquor commission and the City Council, this violates the managerial form of government and therefore, the local liquor control commission has no authority.

Appellant's contentions are beyond the scope of the authority of this Commission to review. An administrative agency is limited to the powers granted to it by the legislature, and any actions it takes must be authorized by statute. *Vuagniaux v. Department of Professional Regulation*, 208 Ill.2d 173, 186, 280 Ill.Dec. 635, 802 N.E.2d 1156 (2003). An agency "has no general or common law authority." *Vuagniaux*, 208 Ill.2d at 186, 280 Ill.Dec. 635, 802 N.E.2d 1156. "Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created. The agency's authority must either arise from the express language of the statute or 'devolve by fair implication and intendment from the express provisions of the [statute] as an incident to achieving the objectives for which the [agency] was created.'" *Vuagniaux*, 208 Ill.2d at 187-88, 280 Ill.Dec. 635, 802 N.E.2d 1156 (quoting *Schalz v. McHenry County Sheriff's Department Merit Comm'n*, 113 Ill.2d 198, 202-03, 100 Ill.Dec. 553, 497 N.E.2d 731 (1986)). "The issue of an administrative body's authority presents a question of law and not a question of fact. The determination of the scope of the agency's power and authority is a judicial function and is not a question to be finally determined by the agency itself." *County of Knox ex rel. Masterson v. The Highlands, L.L.C.*, 188 Ill.2d 546, 554, 243 Ill.Dec. 224, 723 N.E.2d 256 (1999).

Furthermore, a municipal enactment, adopted under statutory authority, enjoys a presumption of validity. *City of Decatur v. Chasteen*, 19 Ill.2d 204, 210, 166 N.E.2d 29 (1960). Nevertheless, the due process clause prohibits the arbitrary, unreasonable, and improper use of municipal power. *City of Decatur*, 19 Ill.2d at 210, 166 N.E.2d 29. Thus, to overcome the presumption of validity, the party challenging the municipal enactment must show by clear and affirmative evidence that the ordinance is arbitrary, capricious, or unreasonable; that there is no permissible interpretation of the enactment that justifies its adoption; or that the enactment will not promote the safety and general welfare of the public. *City of Decatur*, 19 Ill.2d at 210, 166 N.E.2d 29. Stated conversely, every municipal enactment must be free from the constitutional infirmities described above. Thus, a municipality's duty to act in the public interest derives not

from a legislative pronouncement but from the due process clause of the constitution itself. See *City of Decatur*, 19 Ill.2d at 210–11, 166 N.E.2d 29.

The Commission may rule on matters which fall within the scope of the Liquor Control Act. However, Appellee is asking the Commission to rule on the validity of an ordinance. A ruling on the validity of an ordinance falls outside of the scope of the Liquor Control Act. Accordingly, we must presume that the ordinance which creates the Carbondale Local Liquor Control Commission is valid.

iii. Summary Closure/Suspension Protocol

The Liquor Control Act contemplates a situation and procedure when a local liquor commissioner may summarily close a license. The Act sets forth in pertinent part:

...If the local liquor control commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community he may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing order the licensed premises closed for not more than 7 days, giving the licensee an opportunity to be heard during that period. 235 ILCS 5/7-5.

Furthermore, the Carbondale Revised Code provides for a similar procedure for when the Carbondale Local Liquor Commission wishes to summarily close a business. CRC §2-2-3(B).

The Carbondale Code provides:

A licensed premises may be closed for not more than seven (7) days without notice or hearing, upon the issuance of a written order stating the reason(s) for closing if the Chairman of the Local Liquor Control Commission has reason to believe that the continued operation of the specific licensed premises will or does threaten the welfare of the community. Upon being presented with reliable evidence of a violation of this Code which the Chairman of the Local Liquor Control Commission reasonably believes poses a danger or threat to the health, safety or welfare of the community, the Chairman of the Local Liquor Control Commission may take action to summarily suspend a liquor license without full Local Liquor Control Commission action. An evidentiary hearing before the Hearing Officer shall

be held within seven (7) days from the date of suspension, giving the licensee the opportunity to be heard on the matter. CRC §2-2-3(B).

Both the Liquor Control Act and the Carbondale Revised Code contemplate a situation where there is a need to immediately close a business and a procedure by which that immediate closure can be reviewed. In both situations, the license can be closed or suspended for a period of up to seven days based on a threat to the welfare of the community. The Liquor Control Act and the Carbondale Revised Code provide for a hearing within the time period of the suspension. The purpose of this hearing is to determine whether the summary closure or suspension should continue for the remaining days. As such, the outcome of the hearing is limited to the period of the summary closure or suspension. If additional suspension is warranted, the local liquor commissioner would need to proceed through the normal process not reserved for extraordinary situations.

The record on this issue is clear. Appellee issued an order pursuant to its authority on June 4, 2020. That order summarily suspended the license of Saluki Bar. A hearing was held within the 7-day period on June 8, 2020 before a hearing officer. Until this point, Appellee followed by its own code and the Liquor Control Act. Appellee had two options: 1) cease the summary suspension/closure following the hearing or 2) allow the summary closure to extend through the end of the authorized 7-day period. However, Appellee deviated from the prescribed process. Instead of making a ruling on the summary suspension/closure, the Appellee opted instead to revoke the license of Appellant. This action was beyond the scope and purpose for the proceeding. Accordingly, Appellee did not proceed in the 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 will analyze whether the findings contained within the order constitute grounds to suspend, revoke, or fine the license. 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, (2001). We take guidance from Administrative Review Law jurisprudence.

The final order adopts the Hearing Officer’s Report and Recommendation which goes into extensive detail outlining the facts at issue. However, the final order amends the findings and instead of the finding that no violation occurred, it finds that Appellee failed to maintain

control of the premises in violation of Carbondale Revised Code Section 2-5-3(D). Accordingly, when viewed on its own, the order 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. We find that findings are supported by substantial evidence in light of the whole record.

The Illinois Appellate Court has ruled that as a reviewing body, the 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, (1996). The findings of the local commissioner are presumed to be correct and will not be disturbed unless contrary to the manifest weight of the evidence. Soldano v. State of Ill. Liquor Control Comm'n, 131 Ill. App. 3d 10, 13 (1985). It is the function of the commissioner to determine the credibility of witnesses and the weight accorded their testimony. Id. Additionally, the courts have found that the question of revocation of a liquor license “presents a peculiarly local problem which can be best solved by the respective local commissioners who, because of their proximity to and familiarity with the situation, have greater access to information from which an intelligent determination can be made. That determination should not be disturbed in the absence of a clear abuse of discretion” Weinstein v. Daley, 85 Ill.App.2d 470, 481–82 (1967). Further the courts have found that, “in cases of this kind, we, and the Circuit Court, and the License Appeal Commission are all required to accept the judgment of the Local Commissioner as to the credibility of the witnesses. It is only he, as the trier of the facts, who is authorized to assess credibility, weigh the evidence, reconcile conflicting evidence, if possible, and, if not possible, determine which witnesses are worthy of belief. Dugan's Bistro, Inc. v. Daley, 56 Ill. App. 3d 463, 470–71 (1977).

The Appellee heard testimony from Danielle Stiles. Ms. Stiles testified that on the morning of June 2, 2020 at approximately 2:04 AM she heard gun shots outside of Saluki Bar. LLC Transcript 1 at 11. She further testified that there were patrons in the facility after 2 AM. Id.

at 13. Lisa Geissler testified that she was a Police Telecommunicator for the City of Carbondale. LLC Transcript 2 at 1. She testified that a call had come into the 911 center at 2:09 AM on the morning of June 2, 2020 related to shots fired. Id at 5. Testimony was heard from Officer Dillon Turk of the Carbondale Police Department. LLC Transcript 2 at 14. He testified that he heard between six and eight gunshots at approximately 2:04 AM. Id. at 16. He testified that he located six or seven shell casings in Appellant's parking lot. Id. at 20. He further testified that in his experience, the type of shell casings found would not have travelled far. Id. at 21. Furthermore, the record contains various exhibits which included police reports and photo evidence which clearly show that a shooting occurred in the parking area maintained by Appellant.

There is sufficient evidence contained within the record to find that Appellant failed to maintain control of its premises which violates Section 2-5-3(D) of the Carbondale Revised Code and that the evidence would be sufficient to sustain a finding that the immediate welfare of the community was threatened. Appellee was able to evaluate the testimony presented and determine its credibility. Ample evidence was presented to reach the decision. Although an immediate summary suspension is a severe discipline, based on the evidence presented, it is not a clear abuse of discretion to impose such a penalty.

Additionally, although Appellee utilizes the services of a Hearing Officer to conduct the evidentiary hearings, the decision of the Hearing Officer is not the final decision. In multiple locations within the Carbondale Revised Code, the decision of the hearing officer can be relied upon to close a case without submitting the order to the Carbondale Local Liquor Commission. CRC 2-2-3(C) and (E). The Carbondale Revised Code places the ultimate decision-making authority in the Local Liquor Commission. CRC 2-2-3(F). The Carbondale Local Liquor Commission is free to reject the findings made by the Hearing Officer.

However, as previously noted, this proceeding began when a summary suspension order was entered. A hearing was held pursuant to the summary suspension authority found in Section 2-2-3(B) of the Carbondale Revised Code and not the standard hearings process as found in Section 2-2-3(A) of the Carbondale Revised Code. As such, the outcome of the hearing was limited by that authority. That authority was limited to no more than seven days. Had Carbondale wished to discipline Saluki Bar in any other way, it would have needed to proceed with a separate notice and citation.

Accordingly, we find that the findings of fact are supported by substantial evidence in the light of the whole record, however, the disciplinary outcome was inappropriate

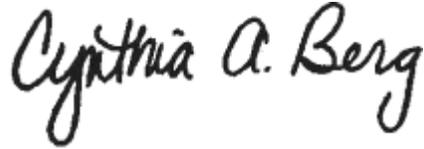
IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Carbondale Local Liquor Commission revoking the B2-10G local liquor license for AUSTIN KNOOB dba Saluki Bar/Levels, located at 760 East Grand Ave, Carbondale, IL is affirmed in part and modified in part. We affirm the decision of the Carbondale Local Liquor Control Commission in that it found that a violation occurred which threatened the welfare of the community.² However, the local liquor commissioner's order is modified to represent the period of time indicated in the original summary order, the period of June 4, 2020 through June 9, 2020.

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 no Petition for Rehearing is filed, this order will be considered the final order in this matter. 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 the Petition for Rehearing is a jurisdictional prerequisite to filing an Administrative Review action.

² It should be noted that the Commission is not affirming whether Appellee had the authority to issue a summary suspension/closure. Appellee has the authority to issue such an order and the initial issuance of such an order is not subject to review. The Commission's review was limited to the propriety of the final order entered.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on May 27, 2021.



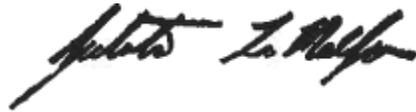
Cynthia Berg, Chairman



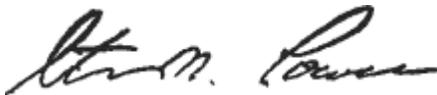
Melody Spann Cooper, Commissioner



Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Donald O'Connell, Commissioner



Patricia Pulido Sanchez, Commissioner

