

STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

FOREST PARK TAP ROOM LLC  
d/b/a FOREST PARK TAP  
7321 MADISON STREET  
FOREST PARK, IL 60130-1509

Appellant,

vs.

FOREST PARK LIQUOR CONTROL  
COMMISSION

Appellee.

Case No.: 21 APP 12

License Number: 1A-1146165

ORDER

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

Procedural History

Forest Park Tap holds a local and State of Illinois liquor license at 7321 Madison St., Forest Park, Illinois. The Forest Park Liquor Control Commission (hereinafter “Forest Park Commission”) had previously issued a Class A1 liquor license to Forest Park Tap in October 2020. On or about July 31, 2021, Forest Park law enforcement conducted an inspection of the Forest Park Tap and issued a citation for remaining open for business after locally established hours of operation for all Class A1 and similar licensed establishments. On August 22, 2021, the Forest Park Commission personally served the Forest Park Tap a copy of a Citation and Notice of Hearing to be held on August 26, 2021. The Forest Park Commission held an evidentiary hearing on August 26, 2021, and issued “Findings of Fact and Order Imposing Sanctions” on August 30, 2021. The

Order Imposing Sanctions revoked the Forest Park Tap Class A1 liquor license. On September 16, 2021, a Notice of Appeal was received by the State Commission but, pursuant to 235 ILCS 7-9, the Forest Park Tap was required to remain closed because the revocation order was the second revocation or suspension order issued against the Forest Park Tap within a 12 month period. On December 8, 2021, the State Commission represented by Chair Cynthia Berg and Commissioner Julieta LaMalfa 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 January 19, 2022, State Commission meeting.

#### Decision

Upon review of the entire certified record, the State Commission REVERSES the order of the Forest Park Commission to revoke the Forest Park Tap Class A1 liquor license.

#### 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 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.* Forest Park has adopted a local ordinance requiring any appeal from an order of the Forest Park Liquor Commissioner to be a review of the official record. *Forest Park Ordinances, Section 3-3-14 (C)(2)(g)*. 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 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.'" *Koehler*, 405 Ill. App. 3d at 1080 (2<sup>nd</sup> Dist. 2010).

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

The Forest Park Commission acted in a manner provided by law by providing the Forest Park Tap with the minimum due process to defend against the charges but walked a very thin line between offering due process and not giving the Forest Park Tap the chance to prepare an adequate defense to the charges. As to technical notice requirements, the Liquor Control Act requires a local commission to provide a minimum of three days written notice of the charges to a licensee to answer to revocation or suspension charges at a hearing. 235 ILCS 5/7-5. In this case, the Forest Park Commission did meet the technical notice requirement by personally serving the Notice of

Hearing on the licensed premises on Sunday, August 22, 2021, at 4:13 pm for a hearing to be held on Thursday, August 26, 2021, at 9:00 am. *Village Exhibits 1-2*. Such a notice period technically satisfied the short statutory requirement of three days, but it is not clear why the Forest Park Commission only gave the minimum of three days. There are no facts in the record that demonstrate that the continued operation of the Forest Park Tap immediately threatened health and safety and, in any event, if the Forest Park Tap posed such a threat, the Forest Park Commission could have exercised its summary closure authority as it had exercised against the licensee in the past. *Local Transcript, p. 46*. Furthermore, Forest Park Tap was not represented by outside counsel and presented only the *pro se* owner as a witness. On the day of the hearing, however, the record does not show the licensee requested more time to prepare a defense, and thus, there is no evidence that if the licensee was granted more time, it would have prepared a more thorough defense. For this reason, as long as it provided three days written notice of hearing to answer to the specific charges of impermissible license violations, the Forest Park Commission met the absolute minimum due process requirements and 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 order constitute grounds to revoke the license. 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, (1<sup>st</sup> Dist. 1996).

In this case, if the Forest Park Commission met all legal and evidentiary standards to prove a violation of law, then the Forest Park Commission would have appropriately acted within its discretion to revoke the Forest Park Tap liquor license. The record in this matter demonstrates that Forest Park Tap has been found liable for multiple license violations since it opened for business in October 2020. The license violations included prior charges for remaining open after business and for public disturbance and nuisance related violations. With these prior violations on Forest Park Tap's license record, the Forest Park Commission would not have acted "unreasonably or arbitrarily" to revoke the Forest Park Tap license for an additional license violation.

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

The Forest Park Commission did not, however, issue findings supported by substantial evidence in light of the whole 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). A finding is "against the manifest weight of the evidence only if an opposite conclusion is clearly evident from the record." *Vino Fino Liquors, Inc v. License Appeal Com'n of the City of Chicago*, 394 Ill.App.3d 516, 522 (1<sup>st</sup> Dist. 2009). In this case, the record is clear that, upon a reasonable interpretation of the Forest Park Liquor Control ordinance, the Forest Park Commission ruled against the manifest weight of the evidence finding that Forest Park Tap violated Section 3-3-9(D)(1)(b) ["Section 9(D)(1)(b)"] and Ordinance 0-15-21 [amending Section 3-3-9(D)(1)(a)] by allegedly remaining open for business after midnight on July 31, 2021.

The Forest Park Commission charged Forest Park Tap with violating Section 9(D)(1)(b) and Forest Park Ordinance 0-15-21. Section 9(D)(1)(b) states:

It shall be unlawful **to remain open for business**, or to admit the public to any premises in, or on, which alcoholic liquor is sold at retail, during the hours within which the sale of such liquor is prohibited, provided, however that restaurants, clubs or hotels may remain open during such hours, so long as no alcoholic liquor may be sold or consumed by the public during such hours.”

*Forest Park Liquor Control, Section 3-3-9(D)(1)(b). (emphasis added).* Additionally, Forest Park Ordinance 0-15-21 (effective on July 2, 2021) states “no alcoholic liquor shall be sold, delivered, given away, or consumed on the premises of Class A1 ... liquor establishments between the hours of twelve o’clock (12:00) a.m. and seven (7:00) o’clock a.m. on all days.” *Village Group Exhibit 3, Forest Park Ordinance 0-15-21.*

In order to determine if Forest Park Tap violated Section 9(D)(1)(b), it is necessary to interpret the language of Section 9(D)(1)(b) and, more specifically, the phrase “remain open for business.” In other words, was Forest Park Tap conducting “business” after midnight in violation of the ordinance? The rules of statutory construction require a plain reading of the language of the ordinance. “The goal of a court when construing a statute is to ascertain the legislature's intent, "and the surest indicator ‘is the language in the statute.’” *Bailey v. Ill. Liquor Control Comm'n*, 405 Ill. App. 3d 550, 554 (*internal citation omitted*). If the language of the statute is clear, its plain and ordinary meaning must be given effect without resorting to other aids of construction." *In re Marriage of Beyer*, 324 Ill. App. 3d 305, 310 (2001). “A court may not supply omissions, remedy defects, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of the language employed in the statute.” *Bailey*, 405 Ill. App. 3d at 554. “Within this context, it may be noted that in matters requiring judicial interpretation of a legislative enactment it is the duty of the court to interpret the statute as it stands, regardless of the court's own opinion as to the desirability of the results stemming from that interpretation, and not to annex new provisions or substitute different ones or

read into the statute exceptions or conditions which depart from its plain meaning.” *People v. Erskine*, 53 Ill. App. 3d 948, 949-50 (1<sup>st</sup> Dist. 1977). “The principles which govern the construction of statutes apply in construing ordinances.” *Id.* at 949.

The certified record in this Forest Park case includes Chapter 3 of the Forest Park Liquor Code but Chapter 3 does not include a definition of word “business.”<sup>1</sup> Therefore, it is appropriate to turn to other references, including a dictionary, to define the term. “In the absence of a statutory definition indicating a different legislative intent, words are to be given their ordinary and commonly understood meanings.” *Bailey*, 405 Ill. App. 3rd at 554.” The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words.” *Cojeunaze Nursing Ctr. v. Lumpkin*, 260 Ill. App. 3d 1024, 1029 (1<sup>st</sup> Dist. 1994). Merriam Webster’s Dictionary defines “business” as follows:

“1 :the activity of making, buying, or selling goods or providing services in exchange for money.”

“2 :work that is part of a job”

“3 :the amount of activity that is done by a store, company, factory, etc.”

<https://www.merriam-webster.com/dictionary/business> (Essential Meaning).

Furthermore, Illinois courts have stated:

“According to Merriam-Webster Dictionary, the term "business" is defined as "a usually commercial or mercantile activity engaged in as a means of livelihood," a "commercial or sometimes an industrial enterprise," and "dealings or transactions especially of an economic nature.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/business> (last visited June 24, 2021) [<https://perma.cc/BQB3-BMMQ>].”

*Wood v. Evergreen Condo. Ass’n*, 2021 IL App (1st) 200687. ¶36.

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<sup>1</sup> While not part of the official record in this case Title 1, Chapter 2 of the Forest Park Village Code also does not contain a definition of “business.”

The common thread of the definition of the term “business” is that there be some form of commercial activity, work, or service performed in exchange for money. Business generally does not consist of passive, non-transactional behavior. If the dictionary definition for the word business is substituted for “business” in Forest Park Ordinance Section 9(D)(b)(2), the ordinance would prohibit licensees from “remaining open for *the activity of making, buying, or selling goods or providing services in exchange for money.*” Therefore, in order to determine if Forest Park Tap violated Section 9(D)(b)(2) and Ordinance 0-15-21, the Forest Park Commissioner should have examined the facts to determine if Forest Park Tap had executed commercial transactions or were providing services for money that could constitute impermissibly “remain[ing] open for business.”

The Forest Park Commissioner, however, did not examine the facts to determine if the Forest Park Tap was conducting commercial transactions or providing other services in exchange for money. Instead, the Forest Park Commission made its findings solely on the basis of whether non-employee patrons *were present* in the Forest Park Tap after midnight on July 31, 2021. Per the Findings of Fact and Order Imposing Sanctions, the Forest Park Commissioner concluded:

1. “That the Licensee’s Exhibit #1, a screenshot of security camera footage inside the licensed premises does in fact show that there were individuals within the licensed premises at 12:02:32 ...and that the Local Liquor Commissioner, ... finds that these individuals **were not employees of the Licensee but rather patrons of the licensee** who were not permitted to be with (sic) the licensed premises after closing hours.”
2. “That Sgt. Pater testified that those individuals, when ordered to leave the premises as it was past closing hours, **never identified themselves as employees of the Licensee** and exited the premises. ...”



3. That Sgt. Pater testified that the two (2) females who were exiting the restroom as he ordered appeared intoxicated and stated **that neither were in any condition to have been working that evening.**”

*Findings of Fact and Order Imposing Sanctions, Paragraphs 2-4 (emphasis added).* It is clear, therefore, that the Forest Park Commissioner found Forest Park Tap to have violated Section 9(D)(b)(2) and Ordinance 0-15-21 because non-employee patrons were present on the premises after midnight.

There is no evidence or very little evidence, however, that Forest Park Tap “remained open for business,” as commonly defined, after midnight on July 31, 2021. Since the focus of the decision was on the determination of the presence of non-employees, there is no testimony or other evidence that demonstrates Forest Park Tap’s business activity. In fact, the manifest weight of the evidence proved the licensee was closed for business because all commercial activity had ceased and no active services for money were being provided to the patrons. Accepting the credibility determination of the hearing officer, it is important to examine Forest Park witness Sergeant Daniel Pater’s testimony related to Forest Park Tap’s business activity. Sergeant Pater testified that, upon entry at 12:02 a.m., he observed four persons sitting at a table consuming food. *Local Transcript, p. 15-16.* He observed another 2-4 persons standing in the middle of the establishment. *Local Transcript, p. 17.* He observed another two persons exiting a restroom. *Local Transcript, p. 19-20.* Out of these persons, Pater’s testimony revealed a total of 8-10 people were inside the establishment, of which 6-8 or, at minimum, four of these persons, were patrons. He further testified that “a couple people were behind the bar and some workers who looked like they were actually cleaning up the bar and wiping it down.” *Local Transcript, p. 16.*

Sergeant Pater's testimony did not demonstrate that Forest Park Tap violated Section 9(D)(1)(b) or Ordinance 0-15-21. First, it is clear from Sergeant Pater's testimony that Forest Park Tap was not allowing entry or "admitting" any person into the premises at 12:02 a.m. in clear violation of Section 9(D)(2)(b). In fact, based on the testimony it is a safe assumption that Forest Park Tap had not been admitting patrons long before midnight because there were only a few people in the premises after midnight on a busy Friday night (*Local Transcript p. 32*). Also, as stated, Sergeant Pater testified that the bartenders and waitstaff were "cleaning up the bar and wiping it down." There is no testimony that the staff was actively conducting "business" by selling, delivering, giving away or serving any item, much less selling or serving alcoholic beverages. Again, as stated, Sergeant Pater testified that four seated patrons were eating food when he arrived, and he told them to leave. *Local Transcript, pp. 15-16*. There was no testimony, however, that these persons had been served or were consuming alcoholic beverages after midnight in clear violation of Ordinance 0-15-21. Beyond the four sitting persons, there is no testimony of any person inside the premises being served or consuming alcoholic beverages at 12:02 a.m. If alcoholic beverages were being consumed during Sergeant Pater's visit, it is likely he would have testified to that fact.

In addition to the testimony of Sergeant Pater, there was no testimony or facts suggesting that the licensee was offering any other item or services for money. While there was some reference in the record of the presence of entertainment promoters at 12:02 a.m., there was no testimony of music playing, dancing, a band or D.J. on the premises. There is no evidence of any person watching television or playing games. There was no testimony

of persons congregating outside waiting to get in the business or just leaving the business upon Sergeant Pater's arrival.

Most importantly, the record does not demonstrate that Forest Park Tap or patrons of Forest Park Tap had been causing a disruption to the community at any point on July 30 or July 31, 2021. This is important because Forest Park attempted to control community disruptions by restricting/changing its liquor licensee hours of operation. In the testimonials of each ordinance change included in the record, Forest Park reasoned that restricting liquor licensee hours would reduce overcrowding, public disturbances, public nuisances, fighting, public way alcohol consumption and "other actions endangering both the safety of the general public as well as the safety of Village police officers." *Village Group Exhibit 3, Ordinance Numbers 0-8-21, 0-9-21, 0-15-21, 0-24-21*. Per the testimonials, public disruptions had occurred when licensees were allowed to "remain in business" late into the evening. Consistent with the objectives of the hours of operation restrictions, there is no testimony that Forest Park Tap or patrons of Forest Park Tap on July 30 or July 31, 2021, were responsible for any of the problems referenced in the testimonials of each new ordinance change. At least after midnight on July 31, the ordinance hours restrictions had the desired effect. The fact that Sergeant Pater's testimony does not include any evidence of public disruptions supplements the record that Forest Park Tap did not "remain open for business" beyond the restricted hour of midnight.

Even though parts of the record reflect an assumption that "remaining open for business" included non-employees remaining on the premises, nothing in the Forest Park ordinances suggests such a reading. Again, the term "business" is not a defined term and no language in the Section 9(D) titled "Closing Hours" states that non-employee patrons

must exit a licensed premise at closing time. If Forest Park requires that all existing food consuming patrons be required to leave the premises of an A1 license when the prohibition on the sale and consumption of alcoholic liquor begins, the ordinance should expressly state that patrons must leave. In fact, the Forest Park liquor ordinance references such language in another Section of the Code. The Code states:

“It shall be unlawful for the holder of a liquor license . . . to permit any person under the age of twenty one (21) except waiters and waitresses, **to be in or remain in any room or place in which alcoholic liquor . . . is served**, within an establishment whose principal business is the sale of alcoholic liquor.”

*Village Group Exhibit 3, Liquor Control Ordinance Chapter 3, Section 3-3-11(E)(1) (emphasis added)*. In the same fashion, Forest Park could have drafted Section 9(D)(1)(b) to read that it would be unlawful for persons, except staff “to be in or remain in the premises” of the licensed establishment. Forest Park did not draft Section 9(D)(1)(b) in such a manner, however, leaving open the interpretation of the phrase “remain open for business.”

The record also reflects the attempt of the Forest Park Commission to read into the ordinance the importance of the physical presence of non-employees when no such condition existed. In the Complaint filed against the licensee, the Forest Park Commission states: “The Code further requires that all non-working individuals **be physically out of the licensed premises at or before 12:00 A.M.**” *Complaint for Liquor Control Violations, Paragraph 7 (emphasis added)*. The Village Prosecutor reemphasized this notion in her closing statement: “The Village of Forest Park’s ordinance is very clear and sets forth that **all patrons must be outside of the establishment and the doors closed prior to closing time**, which per the ordinance as amended, was twelve o’clock midnight.” *Local Transcript, p. 37*. Nothing in any of the ordinances, however, references that patrons be

“physically out of the licensed premises.” In fact, the ordinance is not clear on this point. Section 9(D)(1)(b) prohibits the licensee from “remain[ing] open for business.” Ordinance 0-15-21 states “no alcoholic liquor shall be sold, delivered, given away or consumed on the premises.” Neither the Ordinance nor any other section of the Village Liquor Code requires all patrons must be “physically out of the licensed premises” at the time of the cessation of alcohol sales and consumption. As discussed, using the term “open for business” allows patrons to remain on the premises after hours. As long as there is no evidence of the admittance of new persons, of commercial activity, of the provision of services for money [Violations of Section 9(D)(1)(b)] and no evidence of the consumption of alcoholic beverages on premises (Violation of Ordinance 0-15-21), there is no violation. In this manner, the Forest Park Commission did not rely on substantial evidence in light of the whole record and its ruling is against the manifest weight of the evidence

**IT IS HEREBY ORDERED:**

For the reasons stated herein, because the Forest Park Commission did not rely on substantial evidence in light of the whole record, the decision to revoke the Forest Park Tap liquor license is REVERSED.

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.

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



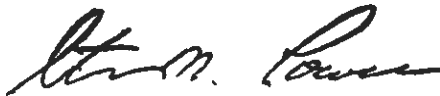
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Thomas Gibbons, Commissioner



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Julieta LaMalfa, Commissioner



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Steven Powell, Commissioner



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Donald O'Connell, Commissioner



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Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS                            )  
COUNTY OF COOK                            ) 21APP 12

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: January 27, 2021.

*/s/ Richard R. Haymaker*

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Richard R. Haymaker

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