

STATE OF ILLINOIS  
LIQUOR CONTROL COMMISSION

THE GATHERING, INC.  
1718 SECOND AVENUE  
ROCK ISLAND, IL

APPELLANT,

V.

ROCK ISLAND LIQUOR CONTROL  
COMMISSION

APPELLEE

Case No.: 21 APP 15

License Number: N/A

ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (“State Commission”) upon the appeal of The Gathering, Inc., Appellant (“The Gathering”), the State Commission being otherwise fully informed, a majority of its members do hereby state the following:

Procedural History

On or about June 28, 2021, The Gathering filed an application to obtain a Class E Rock Island liquor license with options for extended hours and entertainment. A Class E license authorizes the sale of alcoholic liquor as a “Tavern with Packaged Sales Secondary.” On or about September 8, 2021, the Rock Island Local Liquor Control Commissioner sent a letter to The Gathering denying the application for a Class E license. On or about September 27, 2021, The Gathering filed a Notice of Appeal with the State Commission appealing the denial of the liquor license. After numerous status calls, on October 25, 2022, the State Commission represented by Commissioner Steven Powell heard on the record arguments on the matter. The State Commission as a whole reviewed the entire record and deliberated on the matter at the December 14, 2022, State Commission meeting.

### Decision

Upon review of the entire certified record, the State Commission AFFIRMS the order of the Rock Island Liquor Control Commission (“Rock Island Commission”) to deny a Rock Island Class E retail liquor license to The Gathering.

### 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.* Rock Island has adopted a local ordinance requiring any appeal from an order of the Rock Island Commission to be a review of the official record. *City Code of Rock Island, Section 3-12(d)*. 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, (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 Rock Island Commission has proceeded in a manner provided by law. The Illinois Liquor Control Act (“Act”) vests with the local commissioner the authority “[t]o grant ... all local licenses issued to persons for premises within his jurisdiction.” *235 ILCS 5/4-4*. “The power to grant licenses also includes the power to refuse licenses.” *Ace Produce Inc. v. Illinois Liquor Control Commission*, 93 Ill. App. 3d 381, 385 (5<sup>th</sup> Dist. 1981). “In granting or denying applications for liquor licenses, the local liquor control commissioner is vested with considerable discretionary power; however, such power must not be abused, and good cause must be shown for the denial of an application.” *McCray v. Daley*, 133 Ill. App. 2d 67, 69 (1<sup>st</sup> Dist. 1971). In determining whether or not to issue a license, local commissioners have broad discretionary powers to regulate “peculiarly local problems pertaining to the public health, safety and morals of the community.” *Stevens v. County of Lake*, 24 Ill. App. 3d 51, 55 (2<sup>nd</sup> Dist. 1974). The issue to be reviewed is “whether or not the local commissioner abused his discretionary power, and whether he acted arbitrarily and without good cause.” *Daley v. License Appeal Comm'n*, Ill. App. 2d 421, 425–26 (1<sup>st</sup> Dist. 1956).

The Gathering has argued the Rock Island Commission was required to give it a hearing prior to the September 2021 denial of the license. (*See* State Commission 10/25/2022 hearing transcript, p. 7). To the contrary, however, the Act requires that the local commissioner hold a hearing prior to *revocation or suspension* but not prior to denial of an original (non-renewal) license application. While the local commissioner's decision to deny a retail license shall not be arbitrary or an abuse of discretion, there is no requirement in law that the local commission grant a hearing prior to the denial of the license. Likewise, there is no requirement nor authorization for the State Commission to grant The Gathering an evidentiary hearing since Rock Island has adopted an ordinance requiring that all State Commission appeals be heard on the record. *City Code of Rock Island, Section 3-12(d)*. Thus, the State Commission is obligated to review the official record of proceedings. *235 ILCS 5/7-9*.

Moreover, at the October 25, 2022, State Commission hearing, The Gathering attempted to introduce new evidence related to the Class E liquor license application that post-dated the September 8, 2021, Rock Island Commission denial decision. The attempt to introduce evidence after the September 8, 2021, application denial was related to The Gathering's efforts to obtain a waiver to Rock Island business and property owner signature requirements for new license applicants. Such efforts by The Gathering to obtain a waiver were after the September 2021 denial. At the State Commission hearing, the Rock Island Commission rejected an offer to stipulate to the introduction of the post-denial letter evidence related to the applicant's attempt to be granted a waiver. Without such a stipulation, the State Commission is not authorized by Section 7-9 of the Illinois Liquor Control Act to hear new evidence.

In the matter before the State Commission related to the September 2021 application denial, the Rock Island Commission had just cause to deny The Gathering's liquor license

application because, at that time, The Gathering “did not meet the standards necessary to be eligible for a liquor license.” *Denial Letter, 9/8/2021, ILCC p. 056*. Per the denial letter, The Gathering did not meet license standards in September 2021 on the following grounds:

1. Inability to obtain mandatory petition signatures as required by local ordinance;
2. The applicant corporation was not in good standing;
3. The applicant lease had expired with no extension;
4. The business location had not passed all of the inspection requirements to be issued a license.

*Id.* The above stated conditions for license issuance are requirements of the Rock Island City Code for liquor licensing [*See City Code of Rock Island, Section 3-4(8), 3-4(14), and 3-6(c), (j), (k)*]. Therefore, in September 2021, the Rock Island Commission ruled according to law in denying The Gathering’s liquor license application.

**B. Whether the order is supported by the findings.**

The Rock Island order is supported by the findings. 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, (1<sup>st</sup> Dist. 1996).

In this case, the Rock Island Commission order to deny The Gathering’s license application is supported by the findings because the Rock Island Commission had a justifiable reason to deny the liquor license and the alternative order would have been to issue the license. Presuming Rock

Island's basis for license denial is legally justified and the decision is supported by substantial evidence, the decision to deny The Gathering's license application is an appropriate order.

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

The Rock Island Commission issued 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).

The Gathering does not contest Rock Island's September 2021 basis for license denial but rather argues subsequent evidence related to the consideration of a signature petition waiver should warrant a reversal of the Rock Island Commission license denial. An application Investigation Report signed by James Morris, Agent in the Office of Professional Standards, reported The Gathering, Inc. was not a corporation in good standing with the Illinois Secretary of State as of date of the Report. *ILCC p. 055*. Also, the lease submitted with the application expired at the end of April 2020 and no documentation was provided to extend the term of the lease. *ILCC p. 029-033*. Additionally, there are a series of location inspection documents listing Code deficiencies from various inspection agencies dating from June of 2019 through July of 2020. *ILCC 038-051*. The September 2021 application Investigation Report states that the Code violations had not been corrected. *ILCC p. 055*. Lastly, the Investigation Report identified ordinance-based signature requirements requiring the applicant to obtain signatures from adjacent and abutting property

owners, plus other property owners which shared frontage space in either direction of the applicant location. Per the Investigation Report, The Gathering did not obtain the necessary threshold of property owner signatures as required by ordinance. *ILCC p. 053-055*. The record is clear, therefore, the grounds for the denial of The Gathering's liquor license application are supported by evidence in the record.

IT IS HEREBY ORDERED:

For the reasons stated herein, the Rock Island Commission decision denying The Gathering, Inc. a Class E liquor license for the premises located at 1718 Second Avenue, Rock Island, IL is AFFIRMED.

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 December 14, 2022.



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Cynthia Berg, Chairman



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Melody Spann Cooper, Commissioner



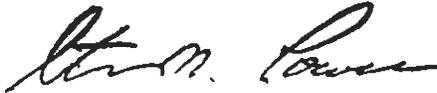
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Thomas Gibbons, Commissioner



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Julieta LaMalfa, Commissioner



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Steven Powell, Commissioner



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Brian Sullivan, Commissioner



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Patricia Pulido Sanchez, Commissioner

STATE OF ILLINOIS                    )  
COUNTY OF COOK                    ) 21APP 15

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 4, 2023.

*/s/ Richard R. Haymaker*

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Richard R. Haymaker

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Rock Island Liquor Control Commission  
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