

STATE OF INDIANA

BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION

IN THE MATTER OF)	
THE PERMIT OF)	
HUFF, PUFF N' STUFF, LLC)	PERMIT NO. TC15265001
D/B/A HUFF, PUFF N' STUFF)	EX-24-001605
201 EAST PICKWICK DRIVE, SUITE C,)	
SYRACUSE, INDIANA 46567)	

PERMITTEE

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Comes now James W, Payne, Hearing Judge, having presided over the violation hearing under EX-24-001605 in the above reference matter on June 25, 2025, issues the following findings and orders:

I. BACKGROUND

Huff, Puff N' Stuff d/b/a Huff, Puff N' Stuff (hereinafter referred to as "Permittee") is a business located at 201 East Pickwick Drive, Suite C, Syracuse, Indiana and holds a tobacco permit under TC15265001 issued by the Indiana Alcohol, and Tobacco Commission (hereinafter referred to as "ATC"). The Indiana State Excise police conducted a permit visit of Permittee on May 6, 2024, taking photos but taking no further action. Later, the Excise Officer contacted the Kosciusko Prosecutor's office and presented information regarding potential violations of state laws and ATC rules and regulations.

As a result of the investigation and referral to the Prosecutor's office, a search warrant was issued by a Superior Court Judge, and the warrant was executed on May 23, 2024. The result of the search pursuant to the warrant was that alcoholic beverages were confiscated, along with plant material later positively identified as marijuana and items identified as normally associated with an operating business such as a computer, tablet, and other electronic devices.

As a result of the investigation and service of the search warrant, violation of 7.1-3-18.5-11, public nuisance (as defined by 7-1-3-33) was filed against the Permittee for violations which included:

IC 7-1-5-10-5 Sales of Alcoholic beverage without a permit
IC 7.1-5-10-3 Unauthorized dealing prohibited
IC 7.1-5-1-1 Prohibition against commercial purposes
IC 35-48-4-11 Possession of marijuana
IC 35-45-5-2 Unlawful gambling
IC 35-45-5-4(c) Promoting professional gambling

II. EVIDENCE BEFORE THE ATC

A. The following individual testified for the Prosecutor:

1. Tiffany Leer, Indiana State Excise Police Office.

B. The following evidence was introduced and admitted before the Hearing Officer:

1. Exhibit 1- An advertisement of a poker game at the Permittee on Super Bowl Sunday
2. Exhibit 2- An advertisement by Permittee for cigars and that the Permittee would "pour the whiskey"
3. Exhibit 3- An advertisement by Permittee saying "Cigars with a Chance of Whiskey"
4. Exhibit 4- An advertisement by Permittee stating that "Margarita machine provided"
5. Exhibit 5- Letter from ATC that Permittee does not have an alcohol permit at the address
6. Exhibit 6- Affidavit of Probable Cause for the search warrant
7. Exhibit 7 -A copy of the Indiana State Excise Police Miranda warnings for Permittee
8. Exhibit 8- The Search Warrant
9. Exhibit 9 -A picture of the entrance at the Permittee's address
10. Exhibit 10- A picture of alcohol on a shelf and a glass encased refrigerator
11. Exhibit 11- The glass encased refrigerator showing alcohol on the right side
12. Exhibit 12- A picture showing alcohol bottles in a box on the floor
13. Exhibit 13- A picture showing alcohol on a shelf
14. Exhibit 14- A picture showing alcohol in a box on the floor
15. Exhibit 15- A picture of alcohol in what appears to be a small cabinet
16. Exhibit 16 -A picture of alcohol on a pool table
17. Exhibit 17- Another picture showing alcohol on a pool table
18. Exhibit 18- Another picture showing more alcohol on a table

C. The following individual testified for the Permittee:

1. Micheal Hensley

D. The following evidence was introduced by the Permittee and admitted before the Hearing Officer:

1. Exhibit A Criminal case report
2. Unredacted State Excise Report

III. FINDINGS OF FACT

1. Huff, Puff N' Stuff LLC d/b/a Huff, Puff N' Stuff is the holder of a tobacco permit issued by ATC under TC15265001 doing business at 201 E. Pickwick Dr., Suite C, Syracuse, Indiana.
2. Michael Hensley is the owner of the Permittee.
3. Permittee conducts business as a smoke shop and fireworks business at a shopping mall at or near or attached to the address of 201 Pickwick Dr, Syracuse, Indiana.
4. Neither Huff, Puff N' Stuff LLC nor Michael Hensley has an alcohol permit issued by the Indiana ATC authorizing them to do alcohol business at that location.
5. On or about May 6, 2024, Indiana State Excise Police Office Tiffany Leer conducted an onsite permit visit at the address of the Permittee.
6. As a result of that visit, the officer obtained from the Kosciusko County Prosecutor a search warrant signed by a Superior Court Judge authorizing a search of the Permittee's place of business. (See Exhibit 8)
7. The result of serving the search warrant was the confiscation of evidence of the presence of alcohol, gambling, marijuana, gambling and inferences of alcohol being available or furnished to the members, patrons, customers or guests at the place of business of the Permittee. (See Exhibit 6)
8. Permittee was granted a Tobacco permit for the sale and use of tobacco products and was not in any way authorized or permitted to sell, distribute or furnish alcohol products.
9. During the investigation, the Indiana State Excise officer discovered that the Permittee advertised in a manner that indicated it sold, dispensed or furnished alcohol beverages:
 - A. Exhibit 1- "Puff's Lounge Open house; Open to the public. BYOB"
 - B. Exhibit 2- "Right before we pour the whiskey in the glass, or after, order doesn't really matter"
 - C. Exhibit 3- A picture of a glass creating the inference of alcohol use with the statement- "With a chance of scotch"

D. Exhibit 4- "BYOB. Margarita machine provided"

10. While the Permittee testified that the location where business is conducted was for members and patrons who paid a fee and brought their own alcohol, the pictures left an unmistakable and opposing picture and image:

- a. Exhibit 10 shows, in the upper left-hand corner of the picture, images of alcohol on a shelf unmarked as belonging to someone specific and openly visible for anyone to choose and obtain.
- b. Exhibit 11, a glass door on the refrigerator having 2 shelves of various beer labeled containers, again, without any, markings that they belong to a specific individual.
- c. Exhibits 12 and 14 show boxes on the floor with bottles of what appear to be liquor with no apparent identification of a specific individual as if they have been completely used or distributed somehow.
- d. Exhibit 13 shows a close-up view of the shelf with bottles of alcohol, some clearly only partially filled, and, in the right-hand corner on the same shelf, various empty glasses that would frequently be used to serve alcohol.
- e. Exhibits 16, 17 and 18 are views of beer and liquor which were confiscated and mentioned in the Indiana State Excise report and do not have any markings that indicate they belong to a specific individual.
- f. Exhibit 15 shows what appears to be a "locker" or storage location that has some liquor and glasses as if they belong to a specific individual that could serve to satisfy the Permittee's statement that members, patrons, guests or others who could bring alcohol for their own use, serve themselves and drink that while smoking tobacco.

11. The Permittee testified that guests were allowed into and on the premises, for a fee, and in fact, the Exhibits indicate that guests were invited by the advertisements admitted as Exhibits; however, the Exhibits and advertisements also can fairly be interpreted to indicate that the alcohol shown in the Exhibits was available and in fact was for the consumption and use of the members, patrons and guests.

12. Respondent's Exhibit A indicates, on 5 of 10 pages, that the employee, Alex, stated that he "smelled marijuana on customers before" and that "...he does hold a poker game..."

there but that it is "... more of a personal game he holds..." and that when it "...gets busy ..." they discontinue the poker game.

13. The evidence as a whole refutes the claim and argument of Permittee that the members, patrons and guests bring their own alcohol onto the premises and consume it, but by a preponderance of the evidence the Hearing Judge finds that the Permittee does in fact make alcohol available to the members, patrons and guests as indicated by the findings of facts demonstrated by Exhibits 1, 2, 3, and 4 admitted into evidence without objection and that the Permittee provides, pours and makes available alcohol to its members, patrons and guests without a valid alcohol permit issued by the State of Indiana.
14. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

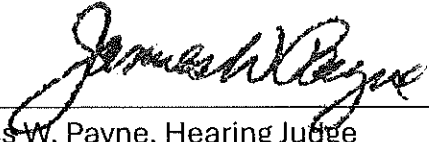
IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 7.1-2-3-9.
2. The tobacco permit application was issued pursuant to the state of Indiana laws and the rules and regulations of ATC.
3. The Commission is authorized to act upon proper application. *Id.*
4. That tobacco permit in no way authorizes the Permittee to serve, pour, furnish or dispense alcohol beverages on the premises.
5. IC 7.1-5-1-1(a) states that it is unlawful for a person to ...sell, barter, deliver, furnish or possess, alcohol or alcoholic beverages, ...for commercial purposes except as authorized by this title.
6. Furnishing alcohol or liquor, except as by law provided, is unlawful. *Ford v State*, 190 Ind. App 404, 129 NE 625 (Ind, 1921) and *Hubbard v State*, 196 Ind. 137, 147 323 (Ind. 1925).
7. The Hearing Judge conducted a fact-finding hearing on the violation filed by the Indiana State Excise police under EX-24-001606.
8. The fact-finding hearing by the Hearing Judge was a public hearing and included a review of the record and documents in the Commission's ATC file and evidence and testimony. IC 7.1-3-19-1 1a; 905 IAC 1-36-7(a); and 905 IAC 1-37 (2).

9. The Hearing Judge may take judicial notice of all of the Commission's files relevant to a case. 905 IAC1-36-8 (a) and e) and 905 IAC 1-37-11(e).
10. The Findings of Fact are based exclusively upon substantial and reliable evidence in the record of the proceedings, the ATC files, and all matters officially noticed in the proceeding. 905 IAC 1-36(7)(e).
11. The substantial evidence standard is met if "a reasonable person would conclude that the evidence and the logical and reasonable inferences therefrom of such a substantial character and probative value so as to support the administrative determination."
Indiana Alcoholic Beverage Commission v. Edwards, 659 N.E.2d 631 (1995) (citing *Civil Rights Commission v. Weigart, Inc.*, 588 N.E.2d 1288, 1289 (ind. 1992).
12. The substantial evidence standard requires a lower burden of proof than the preponderance of evidence test, yet more than a scintilla of evidence test. *Burke v. City of Anderson*, 612 N.E.2d 559, 565, n.1 (Ind. Ct. App. 1993).
13. Based upon the evidence and the testimony, and the records of ATC the Hearing Judge concludes that that the Permittee violated IC 7.1-3-18.5-11, Public Nuisance.
14. The facts support the violation of the tobacco certificate under TC15265001 by violating the following laws of the State of Indiana and the rules and regulations of ATC:
 - 7-1-5-10-5.1 Give away or furnish or otherwise handle alcoholic beverage without a permit
 - 7-1-5-10-5.2 IC 7.1-5-10-3 Unauthorized dealing or furnishing prohibited
 - IC 7.1-5-1-1 Prohibition against commercial purposes
 - IC 35-48-4-11 Possession of marijuana
 - IC 5-45-5-2 Unlawful gambling
 - IC 35-45-5-4(c) Promoting professional gambling
15. Any Conclusion of law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Permittee, Huff, Puff N' Stuff LLC, is found to have violated IC 7.1-3-18.5-11, Public Nuisance, and its tobacco permit issued by the Indiana Alcohol and Tobacco Commission under TC15265001 is hereby revoked.

All of which is dated this 22th day of July 2025.

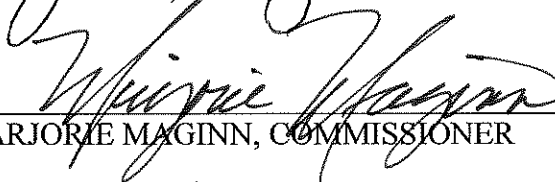

James W. Payne, Hearing Judge

cc: Huff, Puff N' Stuff LLC
Suite C, 201 East Pickwick Drive
Syracuse, Indiana 46567

Approved this 19th day of August, 2025


JESSICA ALLEN, CHAIR


JAMES PAYNE, VICE CHAIRMAN


MARJORIE MAGINN, COMMISSIONER


MARK A. JONES, COMMISSIONER