

MINUTES

ALCOHOL AND TOBACCO COMMISSION

AUGUST 5, 2014

CALL TO ORDER/NOTING OF QUORUM

Chairman Huskey called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Coxey and Commissioner Grubb. Also in attendance were Executive Secretary Rothenberg, Commission Counsel Allen, Prosecutor Mader, and Superintendent Strittmatter.

Matt Brase, Lisa Hays, Alex Intermill, Debbie Scott, Bart Herriman, Diane Masariu and Jenny Drewry were present as observers.

DISPOSITION OF MINUTES

Commissioner Grubb moved to approve the minutes for the July 15, 2014 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

PROSECUTOR'S RECOMMENDATIONS

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the 370 Parties' Agreed Dispositions that were submitted.

Commissioner Grubb moved to approve the Dispositions that were submitted for the August 5, 2014 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

DL50-29240 DOLGENCORP, LLC – Hearing Judge Rothenberg stated this new application was recommended to be denied by the Marshall County Local Board and the Commission upheld that recommendation. The applicant filed a timely appeal and the matter was set for an appeal hearing. The Hearing Judge now submits his Proposed Findings of Fact and Conclusions of Law for recommendation to the Commission.

Commissioner Coxey moved to disapprove the Findings of the Hearing Judge. No members seconded the motion.

Vice Chairman Johnson moved to approve the Findings of the Hearing Judge. Chairman Huskey seconded.

Commissioner Coxey objected to the Findings because the petitions that were circulated did not indicate the basis for objecting to the permit, except for one from a church that specifically stated the church is against alcohol. Also, Excise Officer Michelle Traugher recommended approval of this permit and another grocery permit that was heard the same day.

Vice Chairman Johnson asked Hearing Judge Rothenberg what his thoughts were regarding these objections. He stated that the difference for him was that there were petitions with a total of 250 signatures presented. There were no petitions presented for the other grocery permit application that was before the local board that day.

Chairman Huskey called for a vote on the motion to approve the Findings. No members voted to approve.

Chairman Huskey called for a vote to deny the Findings. Commissioner Coxey moved to deny the Findings. Chairman Huskey seconded.

Vice Chairman Johnson moved to table this matter for further review. Commissioner Coxey seconded. Chairman Huskey voted to table the matter and Commissioner Grubb recused himself from voting on matters involving Dolgencorp, due to family connections.

CONSIDERATION OF APPLICATIONS

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits for renewal, either with or without a quorum at the local board meeting, which have been recommended by local boards and reviewed by our staff with the authority of the Commission. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, which were either recommended by local boards or where a quorum was not present, and reviewed by at least two Commissioners. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for catering. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve the renewal and new applications for Direct Wine Shipper permits. Commissioner Grubb seconded. The motion was unanimously approved.

Eight hundred forty (840) renewals approved, sixty (60) new and/or transfer applications approved, eighteen (18) permits approved for catering, eight (8) permits approved for first year escrow, thirteen (13) permits approved for second year escrow, nine (9) permits approved for third year escrow, one (1) permit approved for fourth year escrow, one (1) permit approved for fifth year escrow, and ten (10) direct shipper renewals/new permits approved.

RENEWAL LETTERS AND WAIVER OF FEES

Commissioner Grubb moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Coxey seconded. The motion was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR52-30599 D R PARKS, LLC – Commission Counsel Allen stated this application is for a type 210 permit. However, the surveyor has submitted a form stating the location is outside the city limits, so the permit should be a type 209.

Mark Webb, counsel for the applicant, has stated he believes figures for food sales should be able to be met.

Commissioner Grubb moved to approve the 209. Commissioner Coxey seconded. The motion was unanimously approved.

RC89-02880 HARTLEY HILLS COUNTRY CLUB, INC. – Vice Chairman Johnson noted this permittee is requesting the Commission convert this type 211-1 permit to a type 210 permit.

The Commission questioned whether this should be sent to the local board for their recommendation, whether the entire golf course is within the city limits and whether the floor plan includes the entire golf course.

Commissioner Grubb moved to table this matter for further investigation. Commissioner Coxey seconded. The motion was unanimously approved.

RR45-05573 ORBIE J VEVSTAD – Vice Chairman Johnson noted this is a renewal application with the local board voting 3-1 to disapprove.

Vice Chairman Johnson moved to uphold the local board's recommendation and deny the renewal. Commissioner Coxey seconded. The motion was unanimously approved.

DL71-07378 KN STORES, INC. – Vice Chairman Johnson noted this is a renewal with the local board voting 2-1 to approve.

Vice Chairman Johnson stated the votes recommending approval were only for a one year renewal. The vote recommending denial was from Excise. The Officer stated there have been numerous violations in the four years of ownership and no plan to remedy the situation.

Vice Chairman Johnson moved to approve the permit for one year and require that within 30 days the permittee must submit a plan on what they are doing to move or sell the permit. Commissioner Grubb seconded. The motion was unanimously approved.

DL71-95055 B & B PETROLEUM, INC. – Vice Chairman Johnson noted this is a renewal application with the local board voting 3-0 to disapprove.

Vice Chairman Johnson moved to uphold the local board's recommendation and deny the renewal. Commissioner Coxey seconded. The motion was unanimously approved.

DL29-22142 BUY RITE, INC. – Vice Chairman Johnson noted this is a transfer application. Three local board members were present, however, the Excise representative, who was sitting in for the designated officer, did not vote.

Vice Chairman Johnson moved to remand this transfer to the local board for reinvestigation. Commissioner Grubb seconded. The motion was unanimously approved.

RR49-12232 AGUALINDA ENTERPRISES, INC. – Vice Chairman Johnson noted this is a renewal application with the local board voting 4-0 to disapprove.

Vice Chairman Johnson moved to uphold the local board's recommendation and deny the renewal. Commissioner Grubb seconded. The motion was unanimously approved.

RR49-30652 EL CENTENARIO LLC – Vice Chairman Johnson noted this is a renewal with the local board voting 2-1 to disapprove. This was tabled from the last meeting.

Vice Chairman Johnson stated he has not reviewed the audio from the local board meeting, but would like to before making a decision.

Vice Chairman Johnson moved to table this matter. Commissioner Coxey seconded. The motion was unanimously approved.

INACTIVE FILES

No Inactive Files

OLD BUSINESS

No Old Business

NEW BUSINESS

REVOCATION OF EMPLOYEE PERMITS

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Edward P. Fasnacht, permit #BR1651381. Mr. Fasnacht will not be eligible to hold an employee permit until July 28, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Carley A. Cunningham, permit #BR1761088. Ms. Cunningham will not be eligible to hold an employee permit until November 19, 2014.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Miranda S. Chandler, permit #BR1684220. Ms. Chandler will not be eligible to hold an employee permit until July 14, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Scott D. Bechman, permit #BR1676784. Mr. Bechman will not be eligible to hold an employee permit until July 17, 2018.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Misty M. Garza, permit #BR1715842. Ms. Garza will not be eligible to hold an employee permit until July 9, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Amber F. Bennett, permit #BR1602090. Ms. Bennett will not be eligible to hold an employee permit until May 10, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Daniel R. Murray, permit #BR1594685. Mr. Murray will not be eligible to hold an employee permit until August 4, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

READOPTION OF RULES – Executive Secretary Rothenberg recommended the Commission approve the readoption of the following rules: 905 IAC 1-8, 905 IAC 1-16.1-1, 905 IAC 1-23-1, 905 IAC 1-29 and 905 IAC 1-52.

Commissioner Coxey moved to approve the readoption of the rules. Commissioner Grubb seconded. The motion was unanimously approved.

DL02-10553 LEBAMOFF ENTERPRISES, INC. - Executive Secretary Rothenberg stated the Commission received the ruling on the judicial review matter, which overturned our decision to not allow common carriers to direct ship wine. That decision came out of the Marion County Superior Court. The Commission is filing an appeal on that ruling tomorrow.

POLICY DETERMINATIONS

No Policy Determinations

ANNOUNCEMENTS

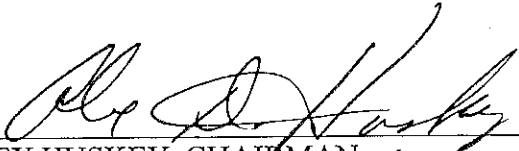
PRIMARY SOURCE REGISTRATION – Commission Counsel Allen stated the Commission is in the process of consolidating the new and renewal application for primary source permits. Also, registrations will no longer be mailed. They will be handled electronically.

CHAIRMAN HUSKEY APPRECIATION – Superintendent Strittmatter stated it has been a pleasure working with Chairman Huskey over the last three years. He also thanked the Chairman for leaving Excise in a condition that made the transition seamless and where he could take them to the next level.

ADJOURNMENT

Commissioner Grubb moved to adjourn the meeting. Commissioner Coxey seconded. The motion was unanimously approved.

Approved this 18th day of August, 2014.



ALEX HUSKEY, CHAIRMAN



DAVID JOHNSON, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MELISSA COXEY, COMMISSIONER