

**STATE OF INDIANA
INDIANA ALCOHOL & TOBACCO COMMISSION**

IN RE THE TOBACCO CERTIFICATE OF:)	CERTIFICATE NO.: TC17006001
)	MASTER NO: TC17006000
MANSI 4 EVER INC)	
D/B/A 4 CLOUD 20)	VIOLATION NO.: EX24-003747
5002 S. CALHOUN ST.)	
FORT WAYNE, IN 46807,)	
Permittee.)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before Mark A. Jones, Commissioner and Hearing Judge of the Indiana Alcohol and Tobacco Commission (“IATC” or “Commission”), on the allegation by the Indiana State Excise Police (“ISEP”) that the above-captioned permittee has violated the Indiana statutes and regulations of the State of Indiana and the Indiana Alcohol and Tobacco Commission as they pertain to a permittee who holds a certificate authorizing the permittee to sell or otherwise distribute, in exchange for consideration, a tobacco product or electronic cigarette at retail. The certificate-holder or permittee in this case is Mansi 4 Ever Inc. d/b/a 4 Cloud 20 (“Permittee” or “Mansi 4 Ever”), and the sole owner of Permittee is Dhirajkumar Patel. The certificate was issued to Permittee on February 5, 2024, and has an expiration date of February 5, 2027.

Permittee and its owner appeared in person, *pro se*, before the IATC, Commissioner Mark A. Jones Hearing Judge presiding, on October 29, 2024. Also present were: the prior owner of the business, Mr. Chetankumar Patel; Mr. Andrew Wignall, IATC Prosecutor; ISEP Officer Doug Schwertfager; and Ms. Kim Chew, court reporter for IATC. The allegation in this matter is that Permittee has violated, and continues to violate, Indiana Code § 35-46-1-11.4, “Operation of tobacco and vaping business within one thousand feet of elementary or secondary school”.

PROCEDURAL HISTORY

Permittee submitted an Online Initial Application for a tobacco sales location license on

January 30, 2024, and the above-captioned Tobacco Certificate and Master Certificate were issued by IATC on February 5, 2024. ISEP received an anonymous complaint in October of 2024 that Permittee's business location was within one thousand feet of a school. After an investigation by ISEP, Mr. Wignall filed a complaint on or about October 15, 2024, and a Notice of Hearing was sent to Permittee that same date.

The hearing was held on October 29, 2024, at the beginning of which Officer Schwertfager was sworn; Mr. Dhirajkumar Patel was sworn at the beginning of his testimony. As provided for in the Indiana statutes and Indiana Administrative Rules, and as requested by Mr. Wignall, the undersigned Hearing Judge took judicial notice of the IATC's files in this matter, including those under this case number, TC17006001 and TC17006000, as well as those under the previous owner, AMBE Inc., TC14410001 and TC14410000. The following witnesses were sworn and their testimony was heard:

Officer Schwertfager; and,

Dhirajkumar Patel.

The following exhibits were introduced into evidence by the IATC, without objection:

Exhibit #1: Printed photograph of Measure Master, distance calculation of 976.11 feet;

Exhibit #2: Printout of Google Maps, distance calculation of 873.58 feet

Exhibit #3: Online Initial Application submitted on 1/30/24 by Mansi 4 Ever Inc.

No exhibits were introduced by Permittee.

FINDINGS OF FACTS

1. The certificate-holder or permittee in this case is Mansi 4 Ever Inc. d/b/a 4 Cloud 20, and the sole owner is Dhirajkumar Patel. The IATC issued master certificate TC17006000 and the location tobacco certificate, TC17006000, to Permittee/ Dhirajkumar Patel on or about February 5, 2024. (IATC records)

2. Mansi 4 Ever Inc. d/b/a 4 Cloud 20 is located at 5002 S. Calhoun Street in Fort Wayne, Indiana, 46807. (IATC records, Officer testimony)

3. ISEP Officer Doug Schwertfager has been with ISEP for 18 years. He is assigned to District 2 of ISEP, and his duties include the regulatory enforcement of the alcohol and tobacco industries, and criminal enforcement when needed. (Officer testimony)

4. In October 2024, District 2 received an anonymous complaint that 4 Cloud 20 was within one thousand (1,000) feet of Lutheran South Unity School, a school teaching kindergarten through eighth grade. (IATC records, Officer testimony)

5. Officer Schwertfager and another ISEP officer were assigned to investigate the complaint; they went to the location of 4 Cloud 20 on October 7, 2024. (IATC records, Officer testimony)

6. Using a measuring wheel, the officers measured the distance from the corner of 4 Cloud 20's building to Lutheran South Unity School's ("LSUS's") building to be nine hundred seventy-six and eleven-one-hundredths feet (976.11'). It was impossible to walk and measure in a straight line due to obstacles in their path, so the wheel's measurement was farther than the actual distance between the buildings. (Officer's testimony; Exhibit #1)

7. Using the same measuring wheel, the officers measured the distance from the corner of 4 Cloud 20's building to the property line of the school, which distance is eight hundred forty-four and one-half feet (844.5'), though again that path was longer due to obstacles. (IATC records, Officer's testimony)

8. The officers then used Google Maps to obtain a direct line "as the crow flies" from the corner of 4 Cloud 20's building to the corner of LSUS's building, which distance is

eight hundred seventy-three and fifty-eight-one-hundredths feet (873.58'). (Officer's testimony, Exhibit #2)

9. The Online Initial Application submitted by Mansi 4 Ever on January 30, 2024 ("Application"), was prepared by Mr. Dhirajkumar Patel's accountant. (Mr. Patel's testimony)

10. Question #11 of the Application asks: "For new applicants, do you understand that a new business selling tobacco may not operate within one thousand 1,000 feet of a public or private elementary or secondary school?" Permittee answered "Y" for "yes". (Exhibit #3, Officer's testimony)

11. Question #12 asks: "Is your business located within one thousand (1,000) feet of a public or private elementary or secondary school?" Permittee answered "Y" for "yes". (Exhibit #3, Officer's testimony)

12. Question #19: "Does the sale of tobacco products, including e-liquid, account for 85% of actual or anticipated retail sales for this location?" Permittee answered "Y" for "yes". (Exhibit #3, Officer's testimony)

13. The certificate holder from whom Mr. Dhirajkumar Patel bought the business was AMBE Inc., owned completely by Mr. Chetankumar Patel.

14. AMBE Inc.'s certificate for this location, TC14410001, and his master certificate, TC14410000, were issued to AMBE Inc. on October 24, 2019; Mr. Chetankumar Patel opened and ran the business as 4 Cloud 20. (IATC records. Mr. Dhirajkumar Patel's testimony)

15. AMBE Inc.'s certificates were renewed on August 15, 2022; TC14410000 and TC14410001 were "Tobacco Sales Master" and Tobacco Sales Location" licenses, respectively.

16. IC § 7.1-3-18.5-2 prohibits more than one certificate at a retail location, and IC § 7.1-3-18.5-3 prohibits the transfer of tobacco certificates.

17. On February 1, 2024, Chetankumar Patel asked IATC to cancel his certificate for this location, effective February 5, 2024, because he had “Sold the business”. IATC cancelled both certificates. (IATC records TC144410001)

18. IATC issued the two certificates for Mansi 4 Ever Inc. d/b/a 4 Cloud 20 that same day. (IATC records)

19. When Mr. Dhirajkumar Patel had earlier called IATC to apply for a license, he was told that because there was already a certificate at that location, he would have to cancel the existing license then apply to get a new one.¹ He had no idea – and was not told by anyone – that cancellation of AMBE Inc.’s certificate(s) could or would affect his ability to continue the same type of business at the same location; he believed that his business was simply a continuation of the same business that had been started in 2019. (IATC records, Mr. Patel’s testimony)

20. The Patels entered into an extensive and substantial “Asset Purchase Agreement” for the business on February 1, 2024. (IATC records)

21. Had Mr. Dhirajkumar Patel known that if the existing certificate was cancelled he couldn’t get a new one due to the relative distances, they would not have cancelled the license; rather, they would have explored their options. (Mr. Patel’s testimony)

22. At the conclusion of the hearing, Mr. Wignall asked for the revocation of Mansi 4 Ever’s certificates based upon the evidence that Permittee is too close to an elementary or secondary school in violation of Indiana Code § 35-46-1-11.4.

23. Any finding of fact that should be considered a conclusion of law shall be deemed so if appropriate.

¹ IC § 7.1-3-18.5-2(b) provides: “A separate certificate is required for each location where the tobacco products or electronic cigarettes are sold or distributed. A retail establishment may not hold more than one (1) active tobacco sale certificate for a retail location at any time.”

THE LAW

1. I.C. § 35-46-1-11.2 was enacted in 1996 and, between April 1, 1996, and June 30, 2020, it prohibited a “tobacco business” from operating within two hundred (200) feet of a public or private elementary school:

- (a) This section does not apply to a tobacco business:
 - (1) operating as a tobacco business before April 1, 1996; or
 - (2) that begins operating as a tobacco business after April 1, 1996, if at the time the tobacco business begins operation the tobacco business is not located in an area prohibited under this section.
- (b) A person may not operate a tobacco business within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes.
- (c) A person who violates this section commits a Class C misdemeanor

(West)

2. There was no Indiana statute defining “tobacco and vaping business” until 2020, when the legislature amended IC § 35-46-1-1:

“Tobacco and vaping business” means a sole proprietorship, partnership, or other enterprise in which:

- (1) the primary activity is the sale of:
 - (A) e-liquids;
 - (B) e-liquid accessories;
 - (C) electronic cigarettes;
 - (D) tobacco;
 - (E) tobacco products;
 - (F) tobacco accessories; or
 - (G) any combination of the products listed in clauses (A) through (F); and
- (2) the sale of other products is incidental.

“Tobacco business” means a sole proprietorship, corporation, partnership, or other enterprise in which:

- (1) the primary activity is the sale of tobacco, tobacco products, and tobacco accessories; and
- (2) the sale of other products is incidental.

Ind. Code Ann. § 35-46-1-1 (West).

3. 2020 also brought about IC § 35-46-1-11.4, which initially provided the one-thousand-foot (1,000') distance restrictions for tobacco and vaping businesses²:

- (a) This does not apply to a tobacco and vaping business:
 - (1) operating as a tobacco and vaping business before July 1, 2020; or
 - (2) that began operating as a tobacco and vaping business after June 30, 2020, if at the time the tobacco and vaping business began operating the tobacco and vaping business was not located in an area prohibited under this section.
- (b) A person may not operate a tobacco and vaping business within one thousand (1,000) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco and vaping business and the nearest point of a building used by the school for instructional purposes.
- (c) A person who violates this section commits a Class C misdemeanor.

(West)

4. In 2024, the legislature amended IC § 35-46-1-11.4, changing the distance requirements for tobacco and vaping businesses so that the point of measurement was from the school's property rather than from a school building:

- (a) Subsection (b) does not apply to a tobacco and vaping business:
 - (1) operating as a tobacco and vaping business before July 1, 2020; or
 - (2) that began operating as a tobacco and vaping business after June 30, 2020, and before July 1, 2024, if at the time the tobacco and vaping business began operating the tobacco and vaping business was not located in an area prohibited under this section.
- (b) A person may not operate a tobacco and vaping business within one thousand (1,000) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco and vaping business and the nearest point of a building used by the school for instructional purposes.
- (c) Subsection (d) does not apply to a tobacco and vaping business:
 - (1) operating as a tobacco and vaping business before July 1, 2024; or
 - (2) that began operating as a tobacco and vaping business after June 30, 2024, if at the time the tobacco and vaping business began operating the tobacco and vaping business was not located in an area prohibited under this section.
- (d) A person may not operate a tobacco and vaping business within one thousand (1,000) feet of school property, measured from the nearest point of the premises occupied by the tobacco and vaping business.

² The two-hundred-foot (200') distance for tobacco businesses has not changed, nor have the points of measurement.

(e) A person who violates this section commits a Class C misdemeanor.
As added by P.L.49-2020, SEC.35, eff. July 1, 2020. Amended by
P.L.107-2024, SEC.6, eff. July 1, 2024. I.C. 35-46-1-11.4, IN ST 35-46-1-
11.4

(West).

DISCUSSION

Mr. Wignall acknowledged that IATC issued the permit after Permittee honestly acknowledged in its application for tobacco certificates that the business was within one thousand feet of an elementary or secondary school, but Mr. Wignall argued that such issuance was in error and that revocation is appropriate given the version of Indiana Code § 35-46-1-11.4 that was in effect on the date that Mr. Dhirajkumar Patel bought the business and obtained his certificates. IC 7.1-3-18.5-3 provides some fodder to Mr. Wignall's argument that because Mansi 4 Ever Inc purchased the business and had to obtain both a new master certificate and a new location certificate, it is a new owner and therefore it is a "new business" that has just begun operations in 2024, well after the one-thousand-foot (1,000') restriction was in place. 7.1-3-18.5-3 provides, in pertinent part:

(a) A certificate issued by the commission under this chapter must contain the following information:

- (1) The certificate number.
- (2) The certificate holder's name.
- (3) The permanent location of the business or vending machine for which the certificate is issued.
- (4) The expiration date of the certificate.

(b) A certificate is:

- (1) valid for three (3) years after the date of issuance, unless the commission suspends the certificate; and
- (2) nontransferable.

As added by P.L.250-2003, SEC.11. Amended by P.L.224-2005, SEC.11,
eff. May 11, 2005.

Ind. Code Ann. § 7.1-3-18.5-3 (West)

In other words, Mr. Wignall's position is that regardless of the continuing name under which it did business, "4 Cloud 20", and the continuing nature of the business, tobacco certificates are non-transferrable, "Mansi 4 Ever Inc" is a tobacco and vaping business that "began operating after June 30, 2020", and at the time it started operating it was within a prohibited area. As one can also see, however, the statute is vague as what kind of "transfer" the statute is prohibiting. Is it simply prohibiting the transfer of ownership of that specific permit number, given subsection (a)'s requirements that the certificate be numbered, include the certificate holder's name and include the permanent location of the business or vending machine? The primary issue here then is whether a person can purchase and continue to run an ongoing tobacco and vaping business that is too close to an elementary or secondary school under current law but was not in violation of the law in effect at the time the tobacco and vaping business began at that location, albeit under different ownership and therefore different tobacco certificates?

AMBE Inc. began doing business as 4 Cloud 20 at 5002 South Calhoun in Fort Wayne in October of 2019, at which time "tobacco and vaping business" was not defined, and a tobacco business could not be "within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the premises occupied by the tobacco business and the nearest point of a building used by the school for instructional purposes." 4 Cloud 20 was clearly outside the two-hundred-foot (200') restriction.

AMBE Inc. and 4 Cloud 20 renewed their certificates in 2022, after the creation of "tobacco and vaping businesses" and the creation of the one-thousand-foot (1,000') restriction in IC § 35-46-1-11.4. That statute excluded AMBE Inc and 4 Cloud 20 - and others like them - from that new distance requirement, however, when it said "[t]his does not apply to a tobacco and

vaping business: (1) operating as a tobacco and vaping business before July 1, 2020....” AMBE Inc and 4 Cloud 20 thus remained within the law.

When IC § 35-46-1-11.4 was amended in 2024 changing the methodology of measurement, if AMBE Inc and 4 Cloud 20 had remained owners of the business, 4 Cloud 20 would still have unquestionably been within the law as it specifically said, in pertinent part: that the new methodology “...does not apply to a tobacco and vaping business: (1) operating as a tobacco and vaping business before July 1, 2024....”.

Neither Title 7.1 nor 905 IAC provides any reference or definition of when a business “began operating” or what constitutes a “new” business. Nor does it appear that forbidding “transfer” of a tobacco certificate was done with the intention of engaging the “new business” moniker. Provisions are made in Title 7.1 for the transfer of alcohol permits; it appears the primary rationale for that is because of quotas, whereas there are no quotas regarding tobacco certificates. It is clear, however, that the legislature has historically protected existing and otherwise law-abiding businesses from new laws and regulations that would have otherwise put some of them out of business. Other examples of this include IC §7.1-3-21-11(i), “Premises Near wall of school or church”, which provides that once an interested church or school waives any objection to a certain type of permit, “the commission may not consider subsequent objections from the church or school to the issuance of the same permit type at the same premises location.”³

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* * * *

(i) If the commission:

(1) receives a written statement from the authorized representative of a church or school as described in subsection (e)(1)(B); and

(2) determines the church or school does not object as described in subsection (e)(1)(C);

the commission may not consider subsequent objections from the church or school to the issuance of the same permit type at the same premises location.

* * * *

Amended by P.L.77-1997, SEC.1; P.L.204-2001, SEC.39; P.L.196-2015, SEC.15, eff. July 1, 2015; P.L.285-2019, SEC.42, eff. July 1, 2019; P.L.194-2021, SEC.56, eff. July 1, 2021; P.L.167-2023, SEC.3, eff. July 1, 2023.

Ind. Code Ann. § 7.1-3-21-11 (West)

Another example is 905 Ind. Admin. Code 1-29-6, “Violation of floor area requirement for retailers”. Sections 2 and 3 of the rule set out specific floorplan guidelines for the sale of package alcohol by retail permittees. Section 6 provides:

Sections 2 through 3 of this rule shall not apply to a permittee in any case where the floor plans of licensed premises, with respect to an area now used for the sale of package liquor, have been approved by the alcohol and tobacco commission (commission) as of the effective date of this rule. In the event that on the date of the adoption of this rule, the licensed premises of a retailer's permit violates the provisions hereof, and the floor plans of such premises have not been approved by the commission, such permittee shall have one hundred twenty (120) days after the effective date of this rule in which to comply fully herewith and to submit to the commission floor plans showing such compliance.

905 IAC 1-29-6 (West).

Is every current certificate-holder in Indiana prevented from selling the business structure and its contents as a continuing business if, after it originally began operating, a primary or secondary school has opened within one thousand (1,000) feet? Title 7.1 does not, nor does it anywhere to the undersigned’s knowledge, state that the businesses can’t be sold or that they can’t be continued in the same location. Such language would be relatively easy for the legislature to include were those its wishes, though that would seem contrary to its continuing expression of support for continuing existing, law-abiding businesses. The legislature’s amendments to the tobacco and vaping business statutes regarding distance restrictions themselves show the legislature’s intent to continue those protections for those in these businesses as well.

CONCLUSIONS OF LAW

1. Any conclusion of law that should be considered a finding of fact shall be deemed so if appropriate.

2. The Commission has jurisdiction over these matters pursuant to Indiana statutes and regulations, including: IC § 7.1-1-2-2; 7.1-2-1-0.3, *et seq.*; 7.1-2-2-1, *et seq.*; 7.1-2-3-1, *et seq.*; 7.1-3-18.5-1, *et seq.*; and the Indiana Administrative Code, 905 IAC 1-1-1 and 905 IAC 1-37-1, *et seq.*.

3. All parties were provided an opportunity to appear, present evidence, respond, cross-examine witnesses, present rebuttal evidence, and make arguments to the hearing judge. 905 IAC 1-37-10.

4. All testimony was presented under oath or affirmation. 905 IAC 1-37-11.

5. The undersigned's taking judicial notice of the Commission's files is appropriate. 905 IAC 1-37-11.

6. ISEP's service of the Notices of Violations upon Permittee was proper, and Permittee received said Notice. 905 IAC 1-37-1.

7. Permittee was afforded its rights to a pre-hearing conference, a settlement conference, and an evidentiary hearing. 905 IAC 1-37-1, *et seq.*.

8. IC 7.1-2-3-33 provides:

The Commission is authorized to:

(1) investigate a violation of; and

(2) enforce a penalty for a violation of;

IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11, IC 35-46-1-11.2,

IC 35-46-1-11.4, IC 35-46-1-11.5, IC 35-46-1-11.7, or IC 35-46-1-11.8.

Ind. Code Ann. § 7.1-2-3-33 (West)

9. For purposes of IC § 35-46-1-11.4, because the business 4 Cloud 20 and its inventory were purchased as an ongoing business and 4 Cloud 20 has remained an ongoing business, 4 Cloud 20 is a business that "began operating as a tobacco and vaping business before July 1, 2020".

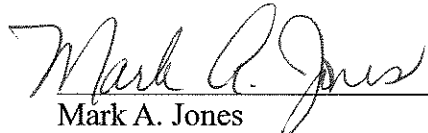
10. The law and the facts are with Permittee and against the IATC Prosecutor.

11. Under the above-captioned Violation No. EX24-003747, Permittee Mansi 4 Ever Inc d/b/a 4 Cloud 20 is not in violation of Title 7.1 and the corresponding regulations of the Indiana Alcohol and Tobacco Commission.

JUDGMENT AND ORDER

IT IS HEREBY RECOMMENDED TO the full Commission of the Indiana Alcohol and Tobacco Commission that it find that the law and the facts are with Permittee and against the IATC Prosecutor, and the Permittee Mansi 4 Ever Inc d/b/a 4 Cloud 20 is not in violation of Title 7.1 and the corresponding regulations of the Indiana Alcohol and Tobacco Commission.

SO ORDERED THIS 10th DAY OF September 2025:


Mark A. Jones
Hearing Judge, IATC KC

cc: Andrew Wignall, IATC, via e-mail;
Dhirajkumar Patel, via USPS Certified Mail, Return Receipt Requested: 5002 S. Calhoun St., Ft. Wayne, IN 46807
Dhirajkumar Patel, via USPS First Class Mail: 5002 S. Calhoun St., Ft. Wayne, IN 46807
Dhirajkumar Patel via email: dhiraj1211@yahoo.com

Approved this 7th day of October, 2025



JESSICA ALLEN, CHAIR



JAMES PAYNE, VICE CHAIRMAN



MARJORIE MAGINN, COMMISSIONER

MARK A. JONES, COMMISSIONER