

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
YORKTOWN FOODMART, INC.)	
9021 W SMITH STREET)	PERMIT NO. DL18-30559
YORKTOWN, IN 47396)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Yorktown Foodmart, Inc., 9021 W Smith Street, Yorktown, Indiana 47396, permit number DL18-30559 (Applicant), is the applicant for a permit to sell beer and wine in a grocery store located in an incorporated area to be issued by the Alcohol and Tobacco Commission (Commission). The application was assigned to the Alcoholic Beverage Board of Delaware County (Local Board). The Local Board held a hearing on February 4, 2016, and voted 4-0 to deny this application based on moral character. On February 16, 2016 the Commission voted to deny the application at its regularly held meeting.

On March 8, 2016, Applicant filed Objection and Request for Appeal Hearing, and the matter was assigned to the Hearing Officer David Rothenberg (Hearing Officer). The matter was set for hearing on May 25, 2016. The Applicant did not appear at the hearing and no additional evidence was taken. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:

1. None
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 1. None
- C. The following individuals testified before the Local Board against the Applicant in this cause:
 1. Eric Hoffman, Deputy Prosecuting Attorney, Delaware County
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 1. Excise Report EX 15-022564, detailing tobacco violations from the premises to which the Applicant has made application.

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 1. None
- B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:
 1. None
- C. The following individuals testified before the Commission against the Applicant in this cause:
 1. None
- D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:
 1. None

IV. FINDINGS OF FACT

1. Yorktown Foodmart, Inc., 9021 W Smith Street, Yorktown, Indiana, 47396, permit number DL18-30559, is the Applicant for a Type 115 permit. (ATC File).

2. Applicant requested, at the Local Board Hearing in December 2015, that the matter be continued until the February 2016 local board hearing. (Local Board)
3. Applicant did not appear at the February 2016 local board hearing. (ATC File)
4. Eric Hoffman testified that under a prior permit, DL18-27716, located at the same premises two years prior, the Applicant committed tax evasion, employed undocumented immigrants, allowed employees to work in excess of what is legally permitted, and committed document fraud. (Local Board).
5. The Applicant is not of good moral character and/or of good repute in the community as required by 905 IAC 1-27-1. (Local Board Hearing).
6. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. Due to the non-appearance of the Applicant at the appeal hearing, The Hearing Judge did not conduct a *de novo* review of the appeal on behalf of the Commission but did

review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2)

7. The Commission may reverse a local board's action in denying an application for a permit *only* if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

8. In this case, the local board based their decision upon the lack of moral character of the Applicant. (Local Board Hearing).

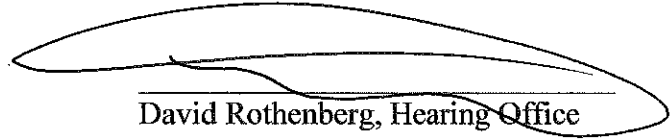
9. The local board's decision was not based on any factor that is listed in Indiana Code 7.1-3-19-11 and no evidence was presented at an appeal hearing to refute this.

10. 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 decision of the Delaware County Local Board resulting in a 4-0 vote to deny the application for the permit number DL18-30559, was supported by substantial evidence, was not arbitrary and the Alcohol and Tobacco Commission should deny said application. The application of Yorktown


Foodmart, Inc., 9021 W Smith Street, Yorktown, Indiana 47396 for the Type 115 permit is therefore DENIED.

DATE: May 25, 2016



David Rothenberg, Hearing Office

Approved this 21st day of June, 2016.



DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER