

MINUTES OF THE REGULAR MEETING  
OPEN SESSION  
ILLINOIS LIQUOR CONTROL COMMISSION  
FEBRUARY 18, 2015  
JAMES R. THOMPSON CENTER – ROOM 9-031  
10:00 AM  
CHICAGO, ILLINOIS

The regular meeting of the Illinois Liquor Control Commission was held at the James R. Thompson Center, 100 W. Randolph Street, Chicago, Illinois 60601 room 9-031 pursuant to notice.

Call the Roll:

Stephen B. Schnorf, Chairman  
Cynthia Cronin Cahill, Commissioner  
Bill Morris, Commissioner  
Donald O'Connell, Commissioner  
Jim Pandolfi, Commissioner  
Maria Saldana, Commissioner (joining after initial call at 10:05 a.m.)  
Amy C. Kurson, Commissioner (joining after initial call at 11:24 a.m.)

Also Present:

Ivan Fernandez, Acting Director  
Richard Haymaker, Chief Legal Counsel  
Tina Tsatsoulis, Legal Counsel  
Dusanka Marijan, Licensing Administrator  
Laura Murphy, Parental Responsibility/Tobacco Coordinator  
Derek Murphy, Parental Responsibility Coordinator  
Ted Penesis, Industry Education Manager  
Mary McNulty, Commission Secretary

I. Approval of Minutes

A motion was made by Commissioner Morris to approve and release the minutes of the January 7, 2015 Business Meeting. The motion was seconded by Commissioner O'Connell and unanimously approved by the Commission.

II. Docket Review

A. Citation Docket

Tina Tsatsoulis stated that the citation docket primarily consists of second SAM violations. Also, a child support matter is on the docket for status that was in front of the Commission a year ago. Ms. Tsatsoulis also explained that there were 81 settlement conference notices issued for January 2015; the gross fines collected

from these settlement conferences was \$25,025 with the net fines collected being \$19,025 (credits issued for prior local payment amounted to \$6000).

#### B. Revenue Docket

Richard Haymaker reviewed tax cases from the past three Chicago hearings. Cinco Hermanos, a case from the November 2014 docket, was revoked. Four cases from the January 2015 docket have been paid in full. Naperville Theater is on the docket with over \$500,000 in debt based on an audit added to the original balance. Mr. Haymaker added that the 15 day stay orders are an effective way to bring licensees into compliance.

Ivan Fernandez added that two continuances were issued at the previous hearing; one of the licensees paid in full and the other has not made contact with the Department of Revenue.

#### C. Appeals

Richard Haymaker stated that there is one appeal on the docket from Elgin. The case involves falsified identification and a \$500 fine issued by the local municipality for an alleged sale of alcohol to a minor.

### III. Divisional Summary

#### A. Legal

Richard Haymaker informed the Commission that a letter regarding Unofficial was sent to Mayor Don Gerard urging him to take action as Local Liquor Control Commissioner to promote a safe and law abiding environment for all attendees of this year's event. Also copied on the letter were Governor Rauner, the University of Illinois Chancellor, and trustees.

#### B. Licensing

Licensing Administrator Dusanka Marijan stated that there has been an increase in online license renewals since last month. In December, 19% of all license renewals were completed online. In January, that number increased to 23%. So far this month, online renewals are up to 26%.

Ms. Marijan added that several brewer and distributor applications have been received within the past week.

#### C. Industry Education

Industry Education Manager Ted Penesis stated that the new BASSET program is underway. Staff is aiming to provide free training to help licensees prepare for

the July 1<sup>st</sup> effective date. There are a number of classes that are already set up. Mr. Penesis added that letters have been sent to mayors, police chiefs, and other law enforcement officials to educate about the new BASSET law. Ivan Fernandez advised that IT has made BASSET implementation a priority.

#### D. Prevention

Parental Responsibility and Tobacco Coordinator Laura Murphy stated that classroom presentations for community outreach will begin in March. She added that the SYNAR program requires maintenance of 80% or higher compliance to minimum age tobacco laws. The goal is to increase the number of inspections in order to ensure that we are enforcing local laws.

Ms. Murphy also announced that FY 2016 applications for tobacco enforcement grants are due by March 31<sup>st</sup>. The FDA contract, which operates on federal fiscal year October 1<sup>st</sup> – September 30<sup>th</sup>, was also renewed.

### IV. General Matters

#### A. Cross-Tier Ownership Rule Review

WSDI attorney Jim Webster informed the Commission that a round table discussion recently took place. At this discussion, various industry members were able to produce a draft a slightly modified version of the rule which will require a statutory amendment. According to Mr. Webster, it was also agreed that the non-resident dealer definition be dropped to a class 1 non-resident dealer license (manufacturer) and class 2 non-resident dealer license.

Chairman Schnorf informed Mr. Webster that if he agreed to submit the modified rule to ILCC staff, it would be reviewed by staff for comment and placed a future agenda for Commission review. The Chairman stated that the ultimate goal is to have an industry and Commission agreed bill so that there are no pockets of opposition. Commissioner O'Connell added that everyone should share what they are trying to do with regard to legislative issues.

#### B. Direct Shipping

Chairman Schnorf announced that the Wine and Spirits Distributors of Illinois (WSDI) would have an opportunity to educate the Commission on the direct shipping issue. He added that he had a significant misunderstanding of the scope of the problem.

WSDI attorney Jim Webster explained that WSDI began investigating direct shipping, and discovered that direct to consumer internet sales are coming from unlicensed sellers outside Illinois. Hence, there is product being shipped into

Illinois that is not controlled or regulated through Illinois' three-tier system. According to Mr. Webster, there are many problems that can result from failing to regulate in this area including the possibility of alcoholic liquor sales to minors, tainted alcohol, and loss of revenue to the state.

Chairman Schnorf added that his primary concern after being educated on the subject is the potential amount of tax revenue the state is losing. Secondly, product that is not being transported by Illinois distributors and subsequently sold to Illinois retailers results in lost jobs to the state.

WSDI attorney Sam Vinson explained that, pursuant to a FOIA request, the State provided WSDI with shipping reports that demonstrates the existence of a significant amount of unlicensed shipments. One business in particular, Wine Country Gift Baskets, had many alcoholic deliveries in the month of December. This business is a subdivision of a winery in California named Houdini. When a person accesses the website for this business, foreign wines are available for purchase. Mr. Vinson argued that the Illinois Winery Shippers License prohibits the sale of foreign wines and that license holders are only allowed to ship their own manufactured product into the state. Mr. Vinson further argued that the State is losing millions of dollars in tax revenue due to the unlicensed sales. Mr. Vinson cited a specific shipping catalog called Bounty Hunter, which does not charge tax at all when an online purchase is made. After significant research, Mr. Vinson advised the Commission that an average of \$50 in state tax revenue is lost for every shipment of alcohol. In addition to the revenue loss, Mr. Vinson stated that the Liquor Control Act imposes a criminal penalty of a Class 4 felony for illegal shipping and allows for extradition of any offender. Also, he stated the State could use the 21<sup>st</sup> Amendment Enforcement Act to seek injunctive relief against shippers. Mr. Vinson suggested that incarceration of one or two illegal shippers would send a strong message to other shippers that Illinois is serious about stopping illegal shipments.

Commissioner Pandolfi questioned whether or not FedEx or UPS is required to validate if a shipper is licensed. Mr. Haymaker explained that UPS and FedEx require each shipper to sign agreements in which the shipper acknowledges that they will comply with the alcoholic shipping laws of each state. In conversations with Commission staff, representatives from FedEx and UPS said the companies will consider stopping the shipments if the state notifies them that the business is shipping illegally.

Mr. Haymaker stated that staff met with the Attorney General's office, the Department of Revenue and other law enforcement officials to discuss unlicensed shippers. Since the illegal shipping is a violation of the Illinois Liquor Act, it was agreed that the ILCC would take the lead on any enforcement action taken against illegal shippers. Mr. Haymaker stated that pinpointing the exact number of illegal shippers has proven difficult because many shipments are sent through fulfillment houses where it cannot be easily determined whether or not the

shipment source is licensed or unlicensed. Mr. Haymaker estimated that 25-75% of alcoholic shipments into Illinois were made by unlicensed shippers. Mr. Haymaker stated that other states' enforcement of illegal shipping has varied depending on the state. Mr. Haymaker noted that the State of New York has been very aggressive in this area and has even taken enforcement action against its own state retailers who allegedly ship illegally into other states. Mr. Haymaker advised the Commission that 49 cease and desist letters have been sent to unlicensed UPS shippers, and 2 letters to unlicensed FedEx shippers. Copies of said letters have been sent to the appropriate shipping companies. In the future, the ILCC intends to have a process in place to examine whether or not shipments are licensed or unlicensed.

Chairman Schnorf explained that enforcing this will require at least one more full time staff member, possibly two. Mr. Vinson stated that WSDI is willing to provide assistance in any way to help with the enforcement against illegal shipping.

Ivan Fernandez introduced a new staff member, Derek Murphy, who is involved with parental responsibility. Mr. Murphy has been in charge of sending cease and desist letters for unlicensed winery shippers.

Chairman Schnorf advised all present that ILCC staff plans to send another 50 cease and desist letters in the upcoming week, primarily to FedEx shippers. Chairman Schnorf concluded that this issue will be on the agenda for the next several meetings.

#### C. Legislation

Richard Haymaker updated the Commission on SB 0067 which is legislation intended to ban a new product called "Palcohol." This new product is a powdered substance that is mixed with water that makes a distilled spirit drink high in alcohol content.

#### D. Restoration Hardware

Dimitri Christopoulos, representing Restoration Hardware (RH), stated that RH is seeking a retailer liquor license at its new location in Chicago. He explained that RH is a holding company and has a subsidiary based out of California, Maison Napa Valley (MNV) who partners with twenty-one other California wineries to run a California tasting room. Because of the alcoholic liquor manufacturing and retailing affiliation between RH and MNV, there are cross-tier and tied house implications. The Liquor Control Act, 235 ILCS 6-4(f), grants a tied house exception to retailers (with manufacturing affiliations) who reduce the sales of the affiliated alcoholic liquor to no more than 10% of all of the alcoholic liquor sold in the retail establishment. Mr. Christopolous also cited

a variety of other RH license conditions that would ensure that RH retailing/manufacturing affiliation would not lead to a tied house.

Commissioner O'Connell questioned if the proposed conditions are something that the ILCC can enforce. Mr. Haymaker that the proposed conditions are above and beyond the conditions required by the Act and are enforceable. A motion was made by Commissioner Kurson to approve a finding that Restoration Hardware's proposal to open a restaurant would not violate tied house concerns or of-value concerns as long as the conditions of the proposed agreement are met. Motion was seconded by Commissioner O'Connell and unanimously approved by the Commission.

#### D. Rehabilitation Hearing – Wondertucky Bottling and Distilling Inc.

A liquor license applicant appeared before the Commission to explain his criminal history. The applicant committed a previous felony and had other numerous arrests, some of which resulted in misdemeanor convictions over the past 30 years.

There was some discussion about delaying the rehabilitation consideration to allow time for the applicant to provide further testimony. The applicant indicated that any further delay would be detrimental to the business, including possible business failure. The Commission stated that they were concerned about the applicant's criminal background but observed that there had been no incidents within the past five years and further stated that they would accept no further criminal incidents in the future. A motion was made by Commissioner Pandolfi to rehabilitate David Cunningham. Motion was seconded by Commissioner Cahill. Votes for the rehabilitation were as follows:

Commissioner Cahill – yes  
Commissioner Pandolfi – yes  
Chairman Schnorf – yes  
Commissioner O'Connell – yes  
Commissioner Kurson – no  
Commissioner Morris – no  
Commissioner Saldana - yes

#### V. Adjournment

Commissioner Morris made a motion to adjourn the meeting. Motion was seconded by Commissioner O'Connell. Motion unanimously approved. Meeting adjourned at 1:10 pm.

ATTEST:

  
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Mary McNulty, Commission Secretary