

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

THE GATHERING, INC.
1718 SECOND AVENUE
ROCK ISLAND, IL

Appellant,

vs.

ROCK ISLAND LIQUOR CONTROL
COMMISSION

Appellee.

Case No.: 23 APP 07

FINAL ORDER

FINAL ORDER

THIS MATTER having come to be heard before the Liquor Control Commission of the State of Illinois (hereinafter “State Commission”) upon the appeal of The Gathering, Inc, Appellant, (hereinafter “The Gathering”) the Commission being otherwise fully informed a majority of its members do hereby state the following:

Procedural History

On October 28, 2022, The Gathering filed a Class E retail liquor license application with the Rock Island Liquor Control Commission (hereinafter “Rock Island” or “Rock Island Commission”). Part of the application process, Rock Island ordinances require a new applicant to obtain a minimum number of signatures on a petition from nearby property owners. The Rock Island ordinances also allow for the City Council to waive the signature requirements. On March 13, 2023, the Rock Island City Council met and voted to waive the applicant signature requirement and recommended the issuance of the liquor license. On April 12, 2023, the Rock Island Commissioner sent a letter to The Gathering denying the liquor license application for cause. After status calls, the Rock Island Commission provided the administrative record, and the State Commission held a hearing “on the record” on June 20, 2023. The State Commission, as a whole, reviewed the entire record and considered the matter at the July 19, 2023, State Commission Meeting.

Upon review of the entire record of the Rock Island Commission, the State Commission REVERSES the Rock Island Commission decision to deny The Gathering a Class E retail liquor license.

Discussion

Section 7-9 of the Liquor Control Act of 1934 (the Act) places the statutory responsibility to hear appeals from final orders entered by Local Liquor Commissioners on the State Commission. 235 ILCS 5/7-9. If the county board, city council, or board of trustees of the associated jurisdiction has adopted a resolution requiring the review of an order to be conducted on the record, the Commission will conduct an “On the Record” review of the official record of proceedings before the Local Liquor Commission. *Id.* The Commission may only review the evidence found in the official record. *Id.* Rock Island has adopted a local ordinance requiring any appeal from an order of the Rock Island Commission to be a review of the official record. *City Code of Rock Island, Section 3-12(d).*

In reviewing the propriety of the order or action of the local liquor control commissioner, the Illinois Liquor Control Commission shall consider the following questions:

- (a) Whether the local liquor control commissioner has proceeded in the manner provided by law;
- (b) Whether the order is supported by the findings;
- (c) Whether the findings are supported by substantial evidence in the light of the whole record.

235 ILCS 5/7-9.

The Illinois Appellate Court has provided guidance that this Commission’s duty is to determine whether the local agency abused its discretion. *Koehler v. Illinois Liquor Control Comm’n*, 405 Ill. App. 3d 1071, 1080, (2010). “Such review mandated assessment of the discretion used by the local authority, stating that ‘[t]he functions of the State commission, then, in conducting a review on the record of ... proceedings before a local liquor control commissioner is to consider whether the local commissioner committed an abuse of discretion.’” *Id.*

A. Whether the local liquor control commissioner has proceeded in the manner provided by law.

The Rock Island Commission proceeded according to law in the consideration of The Gathering Class E retail liquor license application. The Illinois Liquor Control Act (“Act”) vests

with the local commissioner the authority “[t]o grant ... all local licenses issued to persons for premises within his jurisdiction.” 235 ILCS 5/4-4. “The power to grant licenses also includes the power to refuse licenses.” *Ace Produce Inc. v. Illinois Liquor Control Commission*, 93 Ill. App. 3d 381, 385 (5th Dist. 1981). “In granting or denying applications for liquor licenses, the local liquor control commissioner is vested with considerable discretionary power; however, such power must not be abused, and good cause must be shown for the denial of an application.” *McCray v. Daley*, 133 Ill. App. 2d 67, 69 (1st Dist. 1971). While the local commissioner’s decision to deny a retail license shall not be arbitrary or an abuse of discretion, there is no requirement in law that the local commission grant a hearing prior to the denial of the license. Likewise, there is no requirement nor authorization for the State Commission to grant The Gathering an evidentiary hearing since Rock Island has adopted an ordinance requiring that all State Commission appeals be heard on the record. *City Code of Rock Island, Section 3-12(d)*. Thus, the State Commission is obligated to review the official record of proceedings. 235 ILCS 5/7-9.

In this case, the official record of proceedings consists of application documentation and video exhibits of Rock Island City Council meetings. The Rock Island Commissioner’s April 12, 2023, denial letter provided a detailed breakdown of the reasons for the decision to deny the license. The summary of the reasons for the Rock Island Commissioner denial are as follows:

1. The applicant allegedly illegally occupied the applicant business premises prior to the completion necessary building and fire code requirements.
2. While the liquor license was pending, the applicant allegedly advertised and held events with alcohol at the applicant location on at least ten separate occasions.
3. Evidence of large quantities of alcoholic beverage bottles in the trash behind the applicant premises location.
4. Use of the upstairs for large numbers of people in violation of the City fire code.
5. The issuance of the license would “unreasonably constrain plans for redeveloping downtown Rock Island.”

ILCC pp. 001-002.

Moreover, the video exhibits of the City Council meetings demonstrate the Rock Island Commission gave The Gathering an opportunity to speak in favor of the application, and also provided statements from other Rock Island administrators and law enforcement officers in relation to the issuance of the liquor license. As a result of the City Council meetings, the City

Council voted in favor of waiving the ordinance mandated property owner signature requirements and voted to recommend the issuance of the liquor license. The fact that the Rock Island Commissioner/Mayor rejected the recommendation of the City Council to issue the license does not mean the Rock Island Commissioner did not proceed according to law.

Accordingly, the Rock Island County Commission proceeded in the manner provided by law.

B. Whether the order is supported by the findings

In reviewing whether the order is supported by the findings, the State Commission shall analyze whether the findings contained within the order constitute grounds to deny the license. The Illinois Appellate Court has ruled that, as a reviewing body, the issue is not whether the reviewing court would decide upon a more lenient penalty were it initially to determine the appropriate discipline, but rather, in view of the circumstances, whether this court can say that the commission, in opting for a particular penalty, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the commission or statute. *Jacquelyn's Lounge, Inc. v. License Appeal Comm'n of City of Chicago*, 277 Ill. App. 3d 959, 966, (1st Dist. 1996). The State Commission submits that, if the Rock Island County Commission review of The Gathering license application was supported by substantial evidence in light of the entire record, then the only reasonable order would be to deny The Gathering license application. The State Commission sees no alternative order if the findings are adequately supported by the evidence in the record.

C. Whether the findings are supported by substantial evidence in the light of the whole record.

The State Commission reversal the Rock Island Commissioner denial of The Gathering Class E retail liquor license is due to the lack of any evidence in the administrative record to support the Rock Island Commissioner's reasons for denial in the April 12, 2023, denial letter. The issue to be reviewed is "whether or not the local commissioner abused his discretionary power, and whether he acted arbitrarily and without good cause." [*Daley v. License Appeal Comm'n, Ill. App. 2d 421, 425–26 \(1st Dist. 1956\)*](#). Notwithstanding the fact that a local commission may deny liquor license applications on a discretionary basis for good cause, the local liquor control commission cannot by law make a discretionary decision without any evidence in the record. Upon

review, an agency's findings of fact are held to be *prima facie* true and correct, and they must be affirmed unless the court concludes that they are against the manifest weight of the evidence” *Daley v. El Flanboyen Corp.*, 321 Ill. App. 3d 68, 71, (1st Dist. 2001). In this case, the Rock Island Commissioner’s decision to deny the license was against the manifest weight of the evidence in the certified record.

The State Commission can only conclude the Rock Island Commissioner did not rely on any credible evidence to deny The Gathering’s liquor license application because the record certified by Rock Island is bereft of any such evidence supporting the reasons for denial outlined in the Rock Island Commissioner’s April 12, 2023, letter. The Rock Island City Clerk certified the record of this case which included the following:

1. The April 12, 2023, Rock Island Commissioner denial letter. *ILCC p. 001-002*.
2. A series of emails between the City Clark and counsel for The Gathering between December 2022 and February 2023 determining if an application signature waiver request could be added to a Rock Island City Council Commission meeting agenda. *ILCC pp. 004-008*.
3. A February 24, 2023, notification letter from the Rock Island City Clerk scheduling the signature waiver City Council meeting for March 13, 2023. *ILCC p. 009*.
4. A series of form letters dated February 24, 2023, to relevant property owners that may have been impacted by the City Council’s consideration of the waiver of signatures. *ILCC pp. 010-031*.
5. A February 9, 2023, four-page investigative report which concluded The Gathering was not eligible for a liquor license because it had not obtained the necessary property owner signatures but also indicating that the applicant can seek a waiver of the signature requirement.¹ *ILCC p. 031-035*.
6. A completed October 28, 2022, liquor license application with attachments and proof of application fee payment. *ILCC pp. 036-042*.

¹ The Investigative Report also indicated the applicant had not submitted a required Certificate of Liability Insurance, but such a deficiency was not a basis for the April 12, 2023, denial. The Report also referenced that the applicant corporation was in good standing, the applicant had an active lease, the property had no financial delinquencies, and there were no Code issues with the building. *ILCC p. 032*.

7. An undated police investigation memo reporting the applicant owner Kenneth Allen has “no information that would prohibit Mr. Allen from obtaining a liquor license.” *ILCC p. 043.*
8. Other miscellaneous application and property owner signature related documents. *ILCC pp. 044-064.*
9. A March 6, 2023, Rock Island City Clerk letter referencing The Gathering’s June 30, 2021, license application which was also denied. *ILCC p. 044.*

Nothing in the list of the above items contained in the Rock Island certified administrative record pertains the Rock Island Commissioner’s reasons for denial. There is no documentary evidence demonstrating that:

1. The applicant illegally occupied the business premises prior to the completion of the necessary building and fire code inspections.
2. The applicant held live events with alcohol at the business location on ten separate dates.
3. The applicant’s dumpster or the neighboring dumpsters contained large quantities of alcoholic beverage bottles in the trash behind the applicant premises location.
4. The applicant used the upstairs business for large numbers of people in violation of the city fire code.
5. The applicant’s business concept or operation would “unreasonably constrain plans for redeveloping downtown Rock Island.”

In addition to documentary evidence, the Rock Island Commission submitted two videos of City Council meetings that constituted the “public hearing” portion of the review of the signature waiver requirements for the Gathering. One public hearing was conducted on April 25, 2022, for which there was a discussion about some of the concerns raised in the April 12, 2023, denial letter. It is important to note, however, that any information used by the Rock Island Commissioner from the April 25, 2022, City Council public hearing for the April 12, 2023, denial letter was not evidence brought about through a formal hearing process. First, no persons, whether City Council member, applicant, administrator, law enforcement officer, or members of the public, were sworn witnesses. Any statements made by such persons were not sworn statements nor was there any cross-examination of the statements. Second, any reference to documentation at the meeting was not admitted into evidence and not a part of the formal certified record of this case.

Third, the “public hearing” was conducted for the sole purpose of determining if the City Council would waive the signature requirement. The hearing was not conducted to determine the qualifications of the applicant. While there is no mandate that Rock Island conduct a formal hearing, the lack of a formal hearing and the inability to provide an evidentiary basis for the decision impacts the review of this matter. In addition, the fact that the City Council eventually waived the signature requirement and recommended license issuance also impacts the evidentiary review. While the City Council does not have any authority over the decision to approve or deny the license, the fact that the Council approved the signature waiver and recommended the issuance of the license corroborates that the Rock Island Commissioner ruled against the manifest weight of the evidence.

Moreover, even if the State Commission reviews the information elicited from the April 25, 2022, public hearing as a formal hearing, the State Commission still does not agree that there is sufficient evidence in the record to support the Rock Island Commissioner’s claims in the April 12, 2023, denial letter. The denial letter states that the Rock Island Commissioner “had knowledge that individuals were illegally occupying the building” and that “no events should have been taking place” prior to the building being up to Code. At the April 25, 2022, public hearing, the Building Inspector (Miles?) stated that the business was a work site and that only the property owner, their agents, or contractors could be at the location. (*April 25, 2022, City Council Meeting Recording at 21:40*). A police officer later testified that, in response to complaints, he reviewed a city video and noticed “several people” walking in and out of the premises from 7:30-9:30. (*Id. at approximately 32:00*). There is no evidence in the record that such persons entering the building were not the property owner, agents, or contractors. The only statement made about this were the statements made by the applicant, Kenneth Allen, arguing that such persons were his employees or “agents.” There is no proof that any member of the public was allowed inside the building or that there were events with alcohol being held on the third floor of the business.

Even though there are some allegations of events at the business during the April 25, 2022, meeting, such allegations are not supported and are even contradicted. At the meeting, Alderperson Hurt alleged the applicant held a St. Patrick’s Day event and multiple mixed martial arts events prior to being licensed (*Id. at 14:11-16:15*). As to the St. Patrick’s Day event, Alderperson Hurt referenced a written flyer with a beer mug as evidence of the St. Patrick’s Day event with alcohol. No such flyer has been submitted as part of this certified record, however. Alderperson Hurt also

referenced he had heard accounts of persons who have witnessed the mixed-martial arts events, but there are no statements of any witness or law enforcement officer that support the live event allegation. In the denial letter, the Rock Island Commissioner references live events on the third floor, ten specific dates of mixed-martial arts fighting, and even a July 17, 2022, video proving such fights happened. No statements, police reports, or videos of any of the alleged events were provided with the certified record in this matter, however. In addition, at the April 25, 2022, City Council meeting, there was an allegation from another councilmember and a neighboring business about the applicant having an event with purple balloons (*Id. at approximately 31:00-34:00*). The statements made by a police officer who investigated the matter and referenced a police memo during the meeting stated that the police were called to the location and confirmed second-hand The Gathering had been arranging tables with balloons and tablecloths inside the premises. No such police report or police memo are a part of this record, however, and the police officer made no statement about observing the public or even private party event. In fact, the police officer definitively confirmed there was no evidence of any alcohol on premises. The applicant at the meeting stated that the balloons and tablecloths were for the purposes of setting up the business for marketing pictures. Without any documents, statements, or videos to the contrary, there is not any evidence in the record supporting the contention the applicant was holding live events on his premises.

Lastly, while the Rock Island Commissioner alleges that granting a liquor license to The Gathering would “unreasonably constrain plans for redeveloping downtown Rock Island,” the evidence in the record suggests that issuance of the license would not derail downtown development plans. First, there is no statement, oral or written, from any representative of Rock Island establishing a redevelopment plan, nor any statement that the issuance of the license would disrupt development plans. Second, the City Council recommended the waiver of the signature requirement and issuance of the license. While it is true that the City Council does not have the authority to issue a liquor license, the fact that it recommended the issuance of the license is evidence that the issuance of the license would not disrupt downtown development plans. It is important to note that the City of Rock Island has the authority to restrict the issuance of liquor licenses by various means including through zoning laws and licensing designations (e.g. restaurant only licenses; beer/wine licenses). Absent such restrictions and, more importantly, absent any evidence in the record to denote that the issuance of a Class E liquor license would

“constrain plans for developing downtown Rock Island,” such allegation is unsupported by evidence in the record.

For the above stated reasons, there is not substantial evidence in the entire record to support the Rock Island Commissioner’s allegations in the April 12, 2023, denial letter and a good cause justification for the denial of The Gathering’s Class E license application.

IT IS HEREBY ORDERED:

For the reasons stated herein, the decision of the Rock Island Local Liquor Commission denying the Class E liquor license for The Gathering, Inc. is REVERSED.

THIS IS A FINAL ORDER

Pursuant to 235 ILCS 5/7-10 of the Illinois Liquor Control Act, a Petition for Rehearing may be filed with this Commission within twenty (20) days from the service of this Order. The date of mailing is deemed to be the date of service. If the parties wish to pursue an Administrative Review action in the Circuit Court, the Petition for Rehearing must be filed within twenty (20) days after service of this Order as such Petition is a jurisdictional prerequisite to the Administrative Review.

ENTERED before the Illinois Liquor Control Commission at Chicago, Illinois, on July 19, 2023.



Cynthia Berg, Chairman



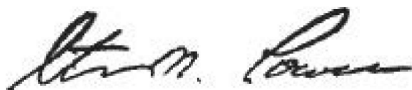
Melody Spann Cooper, Commissioner



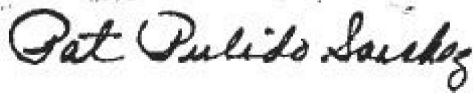
Thomas Gibbons, Commissioner



Julieta LaMalfa, Commissioner



Steven Powell, Commissioner



Patricia Pulido Sanchez, Commissioner



Brian Sullivan, Commissioner

STATE OF ILLINOIS)
COUNTY OF COOK) 23 APP 07

UNDER PENALTY OF PERJURY, as provided by law, section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that I caused copies of the foregoing ORDER to be e-mailed by agreement of the parties prior to 5:00 p.m. on the following date: August 25, 2023.

/s/ Richard Haymaker

Richard Haymaker

The Gathering, INC
C/O Sean O'Leary
Sean.oleary@olearylpgroup.com

Local Liquor Commissioner, Rock Island, Illinois
C/O David Morrison and Hector Lareau
lareau.hector@rigov.org; david@dgmorrisonlaw.com