

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Application
of Checks Cashed of Minnesota,
FACT, CONCLUSIONS OF LAW
Inc. for a Currency Exchange
License at 1375 Maryland Avenue

FINDINGS OF

AND RECOMMENDATION

The above-entitled matter came on for hearing before
Administrative Law
Judge Peter C. Erickson at 9:00 a.m. on Wednesday, November 17, 1993 in
the
Ramsey County Courthouse, St. Paul, Minnesota. The record remained open
through November 22, 1993, for the receipt of post-hearing memoranda.

Douglas W. Thomson, Attorney at Law, Suite W-1260, First National
Bank
Building, 332 Minnesota Street, St. Paul, Minnesota 55101, appeared on
behalf
of the Applicant, Checks Cashed of Minnesota, Inc. Philip B. Byrne,
Assistant
City Attorney, 800 Landmark Tower, 345 St. Peter Street, St. Paul,
Minnesota
55102, appeared on behalf of the St. Paul Office of License,
Inspections and
Environmental Protection (LIEP). Michael A. Sindt, Assistant Attorney
General,
1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota
55101, appeared on behalf of the Minnesota Department of Commerce.

This Report is a recommendation, Not a final decision. The St.
Paul City
Council will make the final decision after a review of the record which
may
accept, reject or modify the Findings, Conclusions and Recommendations
contained herein. Pursuant to section 310.05(c-1) of the St. Paul
Legislative
Code, after receipt of this Report, the City Council shall provide an
opportunity to present oral or written arguments alleging error in this
Report
and to present argument related to any recommended adverse action.

STATEMENT OF ISSUE

The issue to be determined in this matter is whether there are
appropriate
grounds to support the disapproval of the Application herein by LIEP.

Based upon all of the proceedings herein, the Administrative Law
Judge
makes the following:

FINDINGS OF FACT

1. Applicant Checks Cashed of Minnesota, Inc. (hereinafter referred to as Applicant or "Checks Cashed") is a Minnesota corporation owned by Rick G. Huber, 1890 - 52nd Street East, Inver Grove Heights, Minnesota 55077, and Robert W. Dunkel, 1626 East Cope Avenue, Maplewood, Minnesota 55109.

2. On September 10, 1993, the Applicant submitted an Application for a currency exchange license to the Minnesota Department of Commerce. Exhibit 2. On September 22, 1993, the Department of Commerce informed Rick Huber by letter that the Application must include a currency exchange bond in the principal amount of \$10,000 before the Application could be processed. Exhibit 2. On October 4, 1993, the Applicant obtained the \$10,000 bond and submitted a copy of the bond to the Department of Commerce. Exhibit 2.

3. On October 6, 1993. the Commissioner of Commerce submitted the Application of Checks Cashed to the City of St. Paul (hereinafter referred to as "City") pursuant to Minn. Stat. 53A.04(a) for the City's approval or disapproval. Exhibit 1. The City received the Application on October 8, 1993. Exhibit 1.

4. Prior to the receipt of the Application of Checks Cashed from the Department of Commerce, the St. Paul City Council adopted an interim ordinance which regulates the location of currency exchanges in the City. Exhibit 5. This ordinance was adopted by the Council on August 12, 1993 and became effective on September 20, 1993. The pertinent part of the ordinance prohibits the business location of a currency exchange within 100 feet of property designated for residential use as measured from the structure of the currency exchange to the closest property line of the residential use. This ordinance was adopted pending the completion of a study of the City's Comprehensive Plan and regulatory ordinances concerning currency exchanges. The ordinance was designed to be effective for a period of time not to exceed one year but could be extended by a resolution of the City Council in the event more time was needed to consider the results of the study. Exhibit 5. At the current time, the City is studying possible amendments to the City's Comprehensive Plan and zoning regulations concerning currency exchanges. Exhibit 10.

5. Presently, there are nine currency exchanges in the City; eight of these are within the zoning jurisdiction of the City and one within the zoning jurisdiction of the Capitol Area Architectural and Planning Board. Four of the existing currency exchanges are not in compliance with the zoning restrictions contained in the St. Paul ordinance discussed above. Exhibit 11.

6. Based on information supplied from the St. Paul Police Department, the City Planning Division has determined that the Police Department spends twice as much time answering calls and providing services to currency exchanges as it does to banks. Because of the disproportionate number of police calls to currency exchanges and a potential for disruptive behavior, the Planning Division feels that the 100-foot buffer contained in the ordinance is appropriate. This is the same buffer that is now required between residential

districts and such uses as billiard halls, dance halls, and electronic game rooms in B-2 districts. Exhibit 11.

7. The property on which the Applicant proposes to operate a currency exchange is zoned B-3. The B-3 zoning is less restrictive than B-2. The nearest residential use to the closest structure containing the currency exchange is located across a "service alley", a distance of approximately 20 feet. The residential use property is a townhouse development directly to the north of the building which is proposed to house the currency exchange. The townhouse development is located in an area which is zoned RM-2. Exhibit 9.

8. Subsequent to receipt of the Applicant's Application from the Department of Commerce, John Hardwick, a zoning inspector for the City, went to the proposed location of the currency exchange and made measurements to determine compliance with the recently enacted ordinance. These measurements were made on October 13, 1993. Exhibit 8.

9. On October 20, 1993, Assistant City Attorney Philip Byrne sent a letter to Applicant's president, Rick Huber, informing him that the LIEP would recommend denial of the Application for a currency exchange license. The

letter stated that the "basis for the recommendation is that the proposed licensed business is closer than 100 feet to residentially-zoned property, which would violate a provision of the Interim Ordinance relating to currency exchanges". The letter further informed Mr. Huber that he was entitled to a contested case hearing if he wanted to challenge the denial or the grounds on which it was made. Exhibit 13. The Applicant filed a timely request for a hearing.

10. On November 3, 1993, the City mailed notice of this hearing to the Applicant's attorney, Douglas Thomson. In addition, the notice was mailed to the District 2 Community Council, a neighborhood citizens' organization designed to provide organized resident participation on political and social issues which arise in the area. The District 2 Community Council exists as a Minnesota non-profit corporation. Exhibit 6.

11. on November 4, 5 and 6, 1993, notice of the November 17, 1993 hearing concerning the Application herein was published in the St. Paul Legal Ledger. Exhibit 7.

12. Pursuant to Minn. Stat. 53A.04(a), the City solicited testimony from "interested persons". State Representative James Farrell testified that he was very interested in the outcome of this proceeding because he was one of the authors of recently enacted legislation which provided for the approval of a local governing body before the State is authorized to approve an application for a currency exchange license. See, 1992 Laws, ch. 504, 4. Karen Swenson, board member and secretary of the District 2 Community Council, testified that the Council passed a motion opposing the Application herein on November 15, 1993. She stated that the Council was in full support of the 100-foot restriction contained in the interim ordinance. Donald Scott, who lives immediately south of the proposed location of the currency exchange, testified that he was the block chairman of his neighborhood and supported the 100-foot interim ordinance.

13. Immediately after Ms. Swenson testified and before the testimony of the last witness, Donald Scott, the Applicant and its attorney, Mr. Thomson, left the hearing. The only issue raised by the Applicant at the hearing was the constitutionality of the interim ordinance.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSION\$ OF LA

1. The City and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.55 and 310.05(c-1) of the St. Paul Legislative Code.

2. Minn. Stat. 53A.04 regulates the approval or denial of applications for a currency exchange license. The relevant parts of that section read as follows:

(a) Within 30 days after the receipt of a complete application, the commissioner shall deny the application or submit the application to the governing body of the

local unit of government in which the applicant is located or is proposing to be located. The commissioner may not approve the application without the concurrence of the governing body. The governing body shall give published notice of its intention to consider the issue and shall solicit testimony from interested persons, including those in the community in which the applicant is located or is proposing to be located. If the governing body has not approved or disapproved the issue within 60 days of receipt of the application, concurrence is presumed. The commissioner must approve or disapprove the application within 30 days from receiving the decision of the governing body. The governing body shall have the sole responsibility for its decision. The state shall have no responsibility for that decision.

(b) If the application is denied, the commissioner shall send by mail notice of the denial and the reason for the denial to the applicant at the address contained in the application. If an application is denied, the applicant may, within 30 days of receiving the notice of a denial, request a contested case hearing pursuant to chapter 14; provided that if the denial is based upon the refusal of the governing body to concur the governing body must afford the applicant a hearing. The applicant shall have no right to the hearing provided for in this section if the denial is based upon the governing body's refusal to concur but shall have a hearing before the governing body.

3. Sections 2 and 3 of the interim ordinance at issue herein read as follows:

SECTION 2

Pending the completion of this study and for the purpose of prohibiting any development that might be inconsistent with the outcome of these pending studies, and for a period of time not to exceed one year from the date of the adoption of this interim ordinance, a currency exchange, as defined by Minnesota Statutes, Section 53A, subdivision 1, shall be a permitted use in B-2 and less restricted zoning districts, provided the currency exchange is located no closer than one hundred (100) feet to a residential use, as measured from the closest structure containing the currency exchange to the closest property line of the residential use.

SECTION 3

The restrictions enacted herein shall continue in force until the City Council has had an opportunity to consider possible amendments to the Comprehensive Plan and regulatory ordinances concerning currency exchanges, or for one year, whichever occurs sooner, and which may be

extended by resolution of the City Council for additional periods of time, not to exceed an additional 18 months, in the event the studies and recommendations of the Planning Commission and the deliberations of the City Council require such extensions of time.

4. Minn. Stat. 462.355, subd. 4 specifically permits a "municipality to enact interim ordinances restricting land use if a study is being conducted with respect to the amendment of a comprehensive plan. That subdivision reads as follows:

Subd. 4. Interim ordinance. If a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls as defined in section 462.352, subdivision 15, or if new territory for which plans or controls have not been adopted is annexed to a municipality, the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective, and may be extended for such additional periods as the municipality may deem appropriate, not exceeding a total additional period of 18 months. No interim ordinance may halt, delay, or impede a subdivision which has been given preliminary approval prior to the effective date of the interim ordinance.

5. The location of the proposed currency exchange herein is within 100 feet of residential use property. Consequently, the issuance of a license to the Applicant would violate the terms of the interim ordinance.

6. The Administrative Law Judge does not have the authority to declare that the interim ordinance is unconstitutional. Johnson v. Robison, 415 U.S. 361, 368 (1974); one, Beck, Bakken and Muck, Minnesota Administrative Procedure, 8.5 (Butterworth 1987).

7. Sufficient grounds exist for the City of St. Paul to disapprove the Application for a currency exchange license herein.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the St. Paul City Council affirm the recommendation of LIEP that the Application herein be DISAPPROVED.

Dated this 30th day of November, 1993.

PETER ERICKSON
Administrative Law Judge

NOTICE

The City Council is respectfully requested to provide a copy of its final decision on this matter to the Administrative Law Judge by first class mail

Reported: Taped, No Transcript Prepared.

MEMORANDUM

The undisputed facts in this matter show clearly that the proposed location of the currency exchange is well within 100 feet of residential use property. Consequently, the interim ordinance prohibits the issuance of a license to the Applicant. However, the Applicant argued at the hearing that the interim ordinance was unconstitutional. The law is clear that an administrative law judge does not have authority to vacate an ordinance based on a constitutional argument. The Applicant did not, however, offer any evidence during the hearing to support its constitutional claim. Additionally, the Applicant did not submit a memo subsequent to the hearing to support its assertion of unconstitutionality. Consequently, the absence of evidence and legal argument obviates even a discussion of the constitutional issue.

P.C.E.