

4-2101-8551-6

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE ST. PAUL CITY COUNCIL

In Re the Licenses  
of the Badger Lounge,  
John T. Kaufman,  
President

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Thursday, February 24, 1994 at the St. Paul City Hall, St. Paul, Minnesota. The record closed at the conclusion of the hearing.

Philip B. Byrne, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102, appeared on behalf of the St. Paul Department of Licensing and Inspection. The Licensee, John T. Kaufman, d/b/a Badger Lounge, 738 University Avenue West, St. Paul, Minnesota 55104, appeared and testified on his own behalf.

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 Recommendation 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 proceeding is whether grounds exist to take disciplinary action against the Licensee's license to sell intoxicating liquor.

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

FINDINGS OF FACT

1. John T. Kaufman, the owner of 738 University Avenue, Inc.,

d/b/a Badger Lounge, currently holds the following four licenses issued by the City of St. Paul: class C gambling location; Sunday on-sale liquor; restaurant (c) limited; and on-sale liquor. The Badger Lounge is located in a high crime area in St. Paul.

2. A security guard is stationed at the front door of the Badger Lounge and is instructed to card all customers coming through the front door regardless of how old they appear to be. Only a Minnesota driver's license or Minnesota I.D. card are accepted as proof of age. This procedure is followed, in part, to screen out "undesirables" at the door. The security guard begins work at the front door at either 9:00 p.m. or 7:00 p.m., depending upon how busy the night is expected to be. Before the guard begins work, the bartender and waitresses have the responsibility to card anyone who orders a drink in the bar. Notices are posted throughout the bar stating that all patrons must be 21 years of age.

3. The Badger Lounge has three doors, one goes back to the parking lot, one is a side door, and the front door. The parking lot door and side door are locked at 5:00 p.m. However, the side door is an emergency exit which can be opened from the inside. It is possible for patrons inside the bar to open the emergency exit and let individuals in from the outside without them being carded. A sign in the bar states that anyone caught letting individuals in through the emergency exit will be removed from the bar.

4. On December 2, 1993, a Thursday night, the security guard came on duty at 9:00 p.m. The first duty of the security guard is to patrol the parking lot to ensure that there are no vagrants or illegal activities occurring on the bar premises. After the parking lot has been inspected, it is the guard's duty to card every patron inside the bar to ensure that no minors are present.

5. At 9:30 p.m. on December 2, 1993, the St. Paul Police Force executed a search warrant at the Badger Lounge. The purpose of this warrant was to uncover illegal drug transactions and arrest any person in possession of illegal drugs. At the time the warrant was executed, the security guard was still inspecting the parking lot after coming on duty and had not returned to the bar to card the patrons. Approximately 20 officers entered the Badger Lounge and 15 to 20 officers were present around the outside of the bar. At that time, there were approximately 20 patrons in the bar. Each officer inside the bar "secured" an area of the bar by having all of the patrons in that area stand and place their hands in a location where they were visible. Each patron was asked for identification by the police officers.

6. Cody Armstrong, a 16-year-old male, was present in the bar. Mr. Armstrong was not observed purchasing or consuming alcoholic beverages, however, he was arrested for underage consumption.

7. Jocelyn Thomas, a 17-year-old female, was also present in the bar. She was seated at a counter with a can of Special Export beer in front of her. A straw was sticking out of the can which had the same color of lipstick on it that Ms. Thomas was wearing. Ms. Thomas denied consuming any alcoholic beverages; she stated she was only waiting for her mother. Ms. Thomas was also arrested for underage consumption.

8. Jacqueline Thrailkill, a 20-year-old female, had just walked into the bar before the police arrived. The officers discovered that she had several active warrants for her arrest. Consequently, Ms. Thrailkill was arrested due to the outstanding warrants. Ms. Thrailkill had been a regular patron at the bar. She was the niece of a bar employee who had previously stated that Ms. Thrailkill was over 21 years of age.

-2-

9. Both Cody Armstrong and Jocelyn Thomas were referred to the juvenile unit after their arrest.

10. On January 10, 1994, a letter was sent to John Kaufman informing him that two individuals had been arrested for underage consumption of alcoholic beverages in the Badger Lounge on December 2, 1993. The letter alleged that this was a violation of Section 409.08(2) of the St. Paul Legislative Code. The letter further stated that a hearing concerning this allegation would be scheduled if the Licensee requested. Mr. Kaufman subsequently made a timely request for a hearing.

11. On January 31, 1994, the Licensing and Inspection Department issued a Notice of Hearing to John Kaufman scheduling this hearing on February 24, 1994.

12. The Licensee, John Kaufman, has been in the liquor business for 33 years. Previous to this action, he has not been cited for any other violations with respect to his liquor license.

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

#### CONCLUSIONS OF LAW

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

2. Section 409.08(2) of the St. Paul Legislative Code specifically prohibits any licensee from serving or dispensing any intoxicating liquor to a minor or to allow a minor to consume liquor on the licensed premises. The Judge concludes that at the time the police entered the Badger Lounge on December 2, 1993,

Jocelyn Thomas, a minor, was consuming an alcoholic beverage on the premises. There is insufficient evidence to support a conclusion that Jacqueline Thrailkill or Cody Armstrong had purchased or were consuming an alcoholic beverage at the bar.1

3. The violation of section 409.08(2) of the St. Paul Legislative Code constitutes a ground for the City Council to take adverse action against the Licensee's license pursuant to section 310.06 of the Code.

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the St. Paul City Council take appropriate disciplinary action against the Licensee's license to sell alcoholic beverages at the Badger Lounge.

1The Licensing and Inspection Department obtained subpoenas to compel the appearance and testimony of Jacqueline Thrailkill, Cody Armstrong and Jocelyn Thomas at the hearing. However, the process server was unable to locate and serve subpoenas on any of them.

-3-

Dated this 28th day of February, 1994.

s/ Peter C. Erickson

PETER C. ERICKSON  
Administrative Law Judge

NOTICE

It is respectfully requested that the St. Paul City Council 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 Licensee, John Kaufman, contends that because no police officer saw a minor purchasing or consuming an alcoholic beverage at the Badger Lounge on December 2, 1993, no violation of the St. Paul Legislative Code has been proved. In administrative proceedings such as this, the burden of proof that the City must

meet is a preponderance of the evidence. In re Kaldahl, 418 N.W.2d 532, 535 (Minn. App. 1988). A preponderance of the evidence standard essentially means that the party with the burden (the Licensing and Inspection Department) must convince the trier of fact that it is more likely than not that the act alleged to have occurred did in fact happen. In this case, the record shows that Jocelyn Thomas was seated at a counter in the Badger Lounge with a can of beer in front of her. A straw sticking out of the can had the same color lipstick on it that Ms. Thomas was wearing. Although Ms. Thomas denied that she was drinking the beer, she obviously did not want to be arrested for underage consumption. The Judge has concluded that the Licensing and Inspection Department has shown, by a preponderance of the evidence, that Jocelyn Thomas, a minor, was consuming an alcoholic beverage at the Badger Lounge. However, the Judge has also concluded that there is insufficient evidence in the record to show that the other two minors in the bar, Cody Armstrong and Jacqueline Thrailkill, had purchased or consumed alcoholic beverages.

P.C.E.