

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

In the Matter of the Licenses Held by

Blues Saloon, Inc., d/b/a Blues Saloon

for the Premises at 601 Western Ave. N.,

Saint Paul, Minnesota

License ID No. 49441

**FINDINGS OF FACT,**

**CONCLUSIONS, AND**

**RECOMMENDATION**

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The above-entitled matter came on for hearing on April 21, 1999, before Administrative Law Judge Barbara L. Neilson, in Room 220 of the Saint Paul City Hall in Saint Paul, Minnesota. The record remained open until May 17, 1999, for the filing of a reply brief by the City.

Virginia D. Palmer, Assistant City Attorney, Office of the City Attorney, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, represented the City of St. Paul's Office of License, Inspections and Environmental Protection. Roger A. Christianson, Attorney at Law, 386 North Wabasha, Suite 600, St. Paul, Minnesota 55102-1308, appeared on behalf of the Licensee, the Blues Saloon.

**NOTICE**

This Report contains a recommendation, not a final decision. The Saint Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Section 310.05 of the Saint Paul Legislative Code, the City Council's final decision shall not be made until this Report has been made available to the parties to the proceeding and the Licensee has been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The Licensee and any interested parties should contact the Saint Paul City Council, 310 City Hall, Saint Paul, Minnesota 55102, to ascertain the procedure for presenting argument to the Council.

## **STATEMENT OF ISSUES**

This case presents the following issues:

1. Did the Licensee permit consumption or display of alcohol upon its premises at a time when the sale of liquor was not permitted, in violation in Saint Paul Legislative Code § 409.07(c)?
2. If so, should the St. Paul City Council impose discipline against the Licensee's on sale liquor, off sale malt, entertainment, restaurant, or cigarette/tobacco licenses in accordance with Section 409.26 of the Saint Paul Legislative Code?

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. The Licensee, Blues Saloon, Inc., operates a food, liquor, and music establishment known as the Blues Saloon at 601 Western Avenue North in Saint Paul. The Licensee holds cigarette/tobacco, on-sale liquor, off-sale malt, entertainment, and restaurant licenses from the City of Saint Paul (license no. 0049441). These licenses expired on April 30, 1999. (Testimony of Schweinler; Ex. 2.)
2. The Blues Saloon has an upstairs bar and entertainment area in which bands perform as well as a downstairs bar. Typically, band members remain at the Blues Saloon for a period of time after they finish playing to wind down, talk to people in the audience, use the bathroom, pack up their equipment, and haul equipment out to their vehicles. After the band leaves and the bar's customers leave the Blues Saloon, its employees have to count, secure, and complete paperwork regarding the money taken in; set up money to be used at the beginning of the next day; conduct security checks; put things away; wipe off the bar and tables; put up the chairs; clean the stage, band room, and bathrooms; restock and/or reorder depleted items; throw away bottles, cups, and debris; pick up the floor; carry out the trash; wash out the pitchers, glasses, mixers and ashtrays; and otherwise clean up. It is the practice of those working at the Blues Saloon to leave the bar together when they are finished working, for safety reasons. (Testimony of Prange, Weber, Fritsch, Coale.) It is not unusual for employees to still be at the Blues Saloon at 3:30 a.m. on a weekend. (Testimony of Coale.)
3. It is against the policy of the Blues Saloon for employees to drink alcohol on the premises while they are working. Employees have been terminated for violating this policy. (Testimony of Prange, Coale.)
4. On Saturday night, January 9, 1999, the Eddie King Band was performing in the upstairs entertainment area of the Blues Saloon. Last call occurred at

approximately 12:50 a.m. and the band finished playing at approximately 12:45 or 1:00 a.m. in the early morning hours of January 10. The band members remained upstairs at the Blues Saloon for a period of time to chat with members of the audience. By the time the five band members packed up their instruments and sound equipment and carried these items downstairs and out to their vehicles, it was approximately 2:15 a.m. After the band members left, Karen Prange (the manager of the Blues Saloon who also works as an upstairs bartender on weekends) and Lynn Weber (an upstairs bartender) went downstairs to assist other employees in cleaning up the downstairs area. The other employees who were present in the Blues Saloon during the early morning hours of January 10 were Steve Fritsch, the downstairs bartender at the Blues Saloon, and David Gangle, a bouncer employed by the Blues Saloon. Penny Schanus, Mr. Gangle's girlfriend, arrived to give Mr. Gangle and Ms. Weber a ride home. Joe Jeffreys, an individual who is paid by the Blues Saloon on an occasional basis to perform maintenance work, was also present. He had come that evening to repair the women's bathroom after the bar was closed and the customers had left, and remained in the bar to help with clean-up and for security reasons. Because it was cold outside that evening, several of the employees went outside to start their cars and finished their clean-up duties while their cars warmed up outside. (Testimony of Prange, Weber, Jeffreys, Fritsch, Coale.)

5. During the early morning hours of Sunday, January 10, 1999, two Saint Paul Police Officers (Steven Bystrom and Dawn Roeder) were patrolling in the vicinity of the Blues Saloon. At approximately 3:23 a.m., they noticed a woman (Ms. Schanus) entering the Blues Saloon after she had started her vehicle. They decided to investigate because there had been a recent burglary at another bar after closing time. They followed Ms. Schanus into the Blues Saloon. They saw a person standing behind the bar and approximately six other people seated at the bar. Officer Bystrom asked who was in charge, and Ms. Prange responded that she was. He asked her for identification, which she then produced. He then said, "You aren't serving alcohol after hours, are you?" She said "no" and indicated that they were just getting ready to leave. The Police Officers were only in the Blues Saloon for approximately five minutes. They left without issuing a citation. (Testimony of Bystrom, Roeder, Prange, Jeffreys, Weber, Fritsch.)
6. Following the visit, Officer Bystrom prepared a report and provided it to the City's Department of Licensing, Inspection, and Environmental Protection (LIEP). In the report, Officer Bystrom stated in pertinent part as follows:

We saw a bartender behind the bar and six people sitting at the bar with drinks. When they saw us they all tried to hide their drinks. Some put the glass in their laps, others quick drank them, etc. I asked the bartender who was in charge? She said she was identified by mn photo DL as (PRANGE, KAREN ANN DOB 11-15-59 of 5846 Hale Lane White Bear Lk, MN 55110). I asked her if it wasn't a little late to be serving alcohol? She said "Yea, but everyone was just leaving." I informed her a info report would be written.

(Ex. 1; Testimony of Bystrom.)

7. The Police Officers did not have any conversation with the people in the Blues Saloon, other than Ms. Prange. They did not ask why they were there or whether they were employees. They did not check any bottles or glasses to confirm that alcohol was being displayed or consumed, and they did not get close enough to these people to see if they smelled of alcohol. (Testimony of Bystrom, Roeder, Prange.)
8. None of the persons present during the police visit on January 10, 1999, was drinking any alcohol. If they were drinking anything, it was simply soft drinks or water. (Testimony of Prange, Jeffreys, Weber, Fritsch.)
9. Following the issuance of the police report relating to the January 10, 1999, visit to the Blues Saloon, the Director of LIEP decided to recommend that adverse action be taken for a second appearance in accordance with the penalty matrix set forth in Section 409.26 of the Saint Paul Legislative Code. The recommendation was made due to the conclusion of the police officers that after-hours consumption of alcohol had occurred at the Blues Saloon on that date. (Testimony of Schweinler.)
10. On or about February 8, 1999, the City served a Notice of Violation on the Licensee noting that the Director of LIEP was recommending that adverse action be taken against the Licensee's licenses as a result of the January 10, 1999, police visit. (Ex. 3.) The Licensee apparently filed a timely appeal contesting the facts alleged in the Notice of Violation.
11. The Notice of Hearing scheduling the April 21, 1999, hearing in this matter was served on counsel for the Licensee by mail on February 26, 1999, and filed with the Office of Administrative Hearings on March 1, 1999. (Ex. 4.)
12. In February of 1999, the City suspended all of the Licensee's licenses for ten days due to a brief lapse that occurred in the Licensee's liquor liability insurance. Eight days of the 10-day suspension were stayed. (Testimony of Schweinler, Coale; Ex. 2.)
13. The District Seven Planning Council has received complaints concerning late night activity at the Blues Saloon, noise, and people coming in and out of the bar after hours. (Testimony of Samuelson.)

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

### **CONCLUSIONS**

1. The Saint Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to § 310.05 of the St. Paul Legislative Code and Minn. Stat. § 14.55 (1998).
2. The hearing was conducted in accordance with the requirements of Minnesota Statutes sections 14.57 to 14.62 and applicable portions of the procedures set forth in section 310.05 of the Saint Paul Legislative Code.
3. The City has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

4. The City bears the burden in this matter of proving by a preponderance of the evidence that adverse action is warranted with respect to the Licensee's licenses.
5. Chapter 310 of the Saint Paul Legislative Code contains general provisions relating to licenses issued by the City. Section 310.06(b)(6)(a) of the Saint Paul Legislative Code provides that adverse action may be taken when "[t]he licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith . . . ."
6. Pursuant to Section 310.17 of the Saint Paul Legislative Code, "[a]ny act or conduct by any clerk, employee, manager or agent of a licensee . . . which act or conduct takes place . . . on the licensed premises . . . , and which act or conduct violates any state or federal statutes or regulations, or any city ordinance, shall be considered to be and treated as the act or conduct of the licensee for the purpose of adverse action against all or any of the licenses held by such licensee."
7. Section 409.07(a) of the Saint Paul Legislative Code provides, inter alia, that "[n]o sale of intoxicating liquor shall be made after 1:00 a.m. on Sunday nor until 8:00 a.m. on Monday." Section 409.07(c) specifies that "[n]o person shall consume or display or allow consumption or display of liquor upon the premises of an on-sale licensee at any time when the sale of such liquor is not permitted."
8. Pursuant to Section 310.05(l) of the Saint Paul Legislative Code, adverse license action may include the imposition of a fine "in such amount as the council deems reasonable and appropriate, having in mind the regulatory and enforcement purposes embodied in the particular licensing ordinance."
9. Section 409.26 of the Saint Paul Legislative Code sets forth a schedule of penalties that are presumed to be appropriate for on-sale and off-sale licensed premises, but permits the City Council to deviate from these penalties in individual circumstances where warranted. The penalty for after-hours display or consumption of alcoholic beverage is a 4-day suspension for the second appearance.
10. The City failed to demonstrate by a preponderance of the evidence that the Licensee permitted the consumption or display of liquor upon its premises on January 10, 1999, at a time when the sale of liquor was not permitted.
11. The City's recommended imposition of a four-day suspension of the Licensee's licenses thus is not warranted.

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

### **RECOMMENDATION**

**IT IS HEREBY RESPECTFULLY RECOMMENDED:**

That the St. Paul City Council not take adverse action against the licenses held by Blues Saloon, Inc., doing business as Blues Saloon.

Dated this \_\_\_\_\_ day of June, 1999.

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BARBARA L. NEILSON

Administrative Law Judge

### MEMORANDUM

The City of Saint Paul's Office of License, Inspections and Environmental Protection (LIEP) has recommended discipline of the licenses held by the Blues Saloon, Inc., pursuant to Section 310.06(b)(6)(a) of the Saint Paul Legislative Code. This section provides that adverse action may be taken when "[t]he licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith . . . ." The LIEP alleges that those present at the Blues Saloon during the early morning hours of January 10, 1999, violated the ordinance that prohibits the display or consumption of alcoholic beverages after 1:00 a.m.\*

This case presents a close question of fact. The testimony of the police officers and the Blues Saloon employees was directly at odds. Although it is evident that the employees would have some incentive to conceal the improper consumption of alcohol on the work premises since they would be subject to termination for such a violation of company policy, they appeared to give straight-forward and credible testimony concerning the events of January 10. While they did not all give the same description of what, if any, soft drinks were being consumed that evening, they all agreed that no one was drinking any alcoholic beverages. The police officers were only in the Blues Saloon for approximately five minutes. They admittedly did not inspect any of the beverages that they asserted they observed or get close enough to any of the people who were present to determine whether they smelled of alcohol.

Moreover, Officer Bystrom's police report was inconsistent with his hearing testimony and that of Officer Roeder in critical respects, thereby undermining his credibility. For example, the police report indicated that Officer Bystrom saw "six people sitting at the bar with drinks" and alleges that "they all tried to hide their drinks" when they saw the police officers: "Some put the glass in their laps, others quick drank them, etc." In testimony, Officer Bystrom said that he could not say that everyone had a beverage in front of him or her, but believed that most of those present did. He testified that he saw beer bottles out in plain view, despite the fact that there was no mention of beer bottles in the report. He was unable to identify what type of beer it was. He testified that two men on west side of the bar turned to hide their beers, but did not claim at the hearing that all of those present tried to hide their drinks, as the report asserted. There is no

convincing evidence that the drink glasses with clear liquid in them observed by the officers contained alcohol rather than water or soft drinks. Officer Roeder testified that she observed only one person with a beer bottle, which she "thinks" was a Premium Grain Belt. However, she did not go over and look at it.

Officer Bystrom consistently asserted in both his report and his hearing testimony that he asked Ms. Prange "if it wasn't a little late to be serving alcohol?" and that Ms. Prange said, "Yeah, but everyone was just leaving." This version of what happened was not, however, supported by Officer Roeder, who did not remember what was specifically said by Officer Bystrom. It was also contradicted by the testimony of Ms. Prange, Ms. Weber, and Mr. Fritsch, who all testified that Officer Bystrom instead asked, "You aren't serving alcohol after hours, are you?" and that Ms. Prange said "no" and indicated that they were just getting ready to leave. Although these witnesses were sequestered and did not hear each other's testimony, they were consistent in their memory that Ms. Prange did not make an admission to the police officers that alcohol was being served. Ms. Prange's testimony concerning what happened during the incident also explains why she was confused about the purpose of the police call and felt it necessary to inquire about the situation by calling the police station a few days later. The Administrative Law Judge thus has credited the testimony of the Blues Saloon employees in this regard.

It appears that the police officers simply assumed that the people present in the Blues Saloon on January 10 were drinking and did not take the logical steps necessary to confirm their suspicions. Such assumptions do not form the proper basis for the imposition of adverse action against the Licensee. It would have been simple for the police officers to inspect the beverages they saw or assess the persons present, and it is not clear why that was not done. At a minimum, it seems to the Administrative Law Judge that such evidence is properly required for LIEP to tip the balance and make the requisite showing by a preponderance of the evidence that a violation of the liquor ordinance occurred. In the absence of such evidence, the officers simply could not be sure what people were drinking (as Officer Roeder admitted during the hearing).

Based upon all of the circumstances, the Administrative Law Judge finds that the City has not shown by a preponderance of the evidence that adverse action should be taken against the Licensee's licenses for after-hours display or consumption of alcohol. It is therefore recommended that the City Council determine that it is not appropriate to discipline the Licensee's licenses.

B.L.N.