

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY COUNCIL OF
THE CITY OF SAINT PAUL

In Re the License Application of
Vernon W. Crowe, d/b/a Selby
Wine & Spirits, for the Premises Located
at 778 Selby Avenue in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge George A. Beck, serving as a hearing examiner for the City of St. Paul, conducted a hearing in this matter beginning at 9:30 a.m. on Thursday, June 3, 1999, at the St. Paul City Hall. The record closed upon receipt of the final written memorandum on June 30, 1999.

The Applicant, Vernon W. Crowe, was represented by Kenneth M. Bottema, Esq., 3001 Hennepin Avenue South, Suite 309B, Minneapolis, Minnesota 55408. The St. Paul Office of License Inspections and Environmental Protection (LIEP) was represented by Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.

NOTICE

This Report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions and Recommendations. Under § 310.05(c-1) of the City's Legislative Code, the City Council will provide the Applicant the opportunity to present oral or written argument to the City Council before it takes final action. The parties should contact the St. Paul City Council to determine the procedure for presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not the City of St. Paul should grant an off-sale liquor license to the Applicant for 778 Selby Avenue.

Based upon the evidence and argument in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Vernon W. Crowe submitted an application to the City dated October 5, 1998, for an off-sale liquor license at 778 Selby Avenue in St. Paul, doing business as Selby Wine & Spirits, Inc.^[1]

2. The proposed location is approximately 340 feet from the Dayton Residence located at 340 Dayton Avenue.^[2]

3. The Dayton Residence is a residential treatment program for adults with mental illness. It is licensed for 26 beds. It is 100 percent funded by the State of Minnesota.

4. The Dayton Residence is licensed by the Department of Human Services (DHS). DHS makes a site visit to the facility every two years to review its staff, procedures and services. The treatment for residents of Dayton Residence is funded through consolidated mental health grants which are allocated by DHS to Ramsey County. Room and board at the facility is funded through individual client grants.

5. The Dayton Residence is administered by a qualified person licensed by DHS. DHS personnel are not present day to day at the residence. The Department has authority to step in and supervise at the residence if necessary.

6. DHS classifies the Dayton Residence as an institution for mental diseases (IMD) which is defined under federal law^[3] to be "a hospital, nursing facility, or other institution and more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services."^[4]

7. The Dayton Residence is not a state hospital, training school, reformatory or prison.

8. On April 8, 1999, Mr. Crowe was issued a Notice of Proposed Denial of License Application. The sole grounds of the denial was that the proposed location for the off-sale liquor license was within 1,000 feet of the Dayton Residence. The notice advised Mr. Crowe that he was entitled to a hearing.^[5]

9. Mr. Crowe requested a hearing and a Notice of Hearing was issued on May 3, 1999, setting the hearing for June 3, 1999.^[6]

10. Two members of the public testified at the hearing in support of the application.

11. LIEP had no other objections to this application apart from its proximity to the Dayton Residence.

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

CONCLUSIONS

1. The St. Paul City Council and the Administrative Law Judge have authority to conduct this proceeding and to make Findings of Fact under Minnesota law and the St. Paul City Code.^[7]

2. The City of St. Paul gave Mr. Crowe proper and timely notice of the hearing in this matter.

3. The burden of proof in this proceeding is upon the applicant.

4. Minn. Stat. § 340A.412, subd. 4(5), prohibits the issuance of an intoxicating liquor license:

within 1,000 feet of a state hospital, training school, reformatory, prison or other institution under the supervision or control, in whole or in part, of the Commissioner of Human Services or the Commissioner of Corrections;

5. The applicant has demonstrated that the Dayton Residence is not an institution under the supervision or control of the Commissioner of Human Services.

6. The proposed location at 778 Selby Avenue is not in violation of Minn. Stat. § 340A.412, subd. 4(5).

7. The exhibits attached to the applicant's brief are stricken from the record.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the City Council of the City of St. Paul approve the off-sale liquor license application of Vernon W. Crowe, d/b/a Selby Wine & Spirits.

Dated this 13th day of July 1999.

GEORGE A. BECK
Administrative Law Judge

Reported: Taped-no transcript prepared.

MEMORANDUM

The City of St. Paul disapproved the off sale liquor license application of Vernon W. Crowe based upon its good faith determination that the proposed location was within 1000 feet of an institution under the supervision or control of the Commissioner of Human Services, namely, the Dayton Residence. The Dayton Residence is a 26 bed residential treatment program located at 340 Dayton Avenue in St. Paul. It is licensed

by the Department of Human Services which conducts site visits at the facility and funds the facility.

This case presents a question of statutory interpretation, namely, whether a residential treatment program is an institution under the supervision or control of the Commissioner of Human Services, within the meaning of Minnesota liquor law. The objective of statutory interpretation is to ascertain and effectuate the intention of the legislature.^[8] The applicant must demonstrate that its proposed location at 778 Selby Avenue complies with the statute set out at Conclusion No. 4. He first asserts that the Dayton Residence is not an institution within the meaning of the statute. He points out that Minnesota law does not define the Dayton Residence as an institution but describes it as a “residential program”. “Institution” is not defined in Minnesota law.

The City notes that words used in the statutes are to be interpreted according to their plain and ordinary meaning.^[9] It points out that one dictionary definition of institution includes “a public or private place for the care or confinement of inmates, esp. mental patients or other disabled or handicapped persons.”^[10] It is also defined as “a place for the care of persons who are destitute, disabled, and mentally ill.”^[11] The City argues that the Dayton residence is a building used for the care of mentally ill adults and therefore falls within the dictionary definition of “institution”. The City also cites case law from other jurisdictions that interprets the word “institution”. As the City acknowledges, however, that case law is necessarily specific to the statute being examined and does not provide much precedent for Minnesota liquor law.

It does not appear that the legislative intent was to include residential facilities within the prohibition contained in Minn. Stat. § 340A.412, subd. 4(a)(5). At the hearing the City relied upon the federal definition contained in a regulation that classifies the Dayton Residence as an institution for mental disease. That definition, however, was adopted for the implementation of federal law decisions, such as medical assistance funding, and has no particular applicability to Minnesota liquor law.

The City also argues that because the word institution as used in the statute is not modified by words such as “similar” or “such”, the question is not whether the other institutions are sufficiently like state hospitals, training schools, reformatories or prisons, but simply whether they are an institution of any kind. However, the legislature chose to specify “other” institutions rather than “every” institution. Furthermore, this argument ignores the legal principle of *ejusdem generis*, which is codified in Minnesota Statutes.^[12] This canon of construction provides that “general words are construed to be restricted in their meaning by preceding particular words.” For example, in a recent case^[13] the Minnesota Supreme Court had to decide whether a blood bank was included within the category of “a hospital, sanitarium, nursing home or other institution for the hospitalization or care of human beings.” The Court noted that by listing hospitals, sanitariums and nursing homes before the more general “other institutions”, the legislature indicated an attempt to include only those institutions which share common characteristics with the specific institutions listed.^[14]

The word institution, therefore, cannot be interpreted without reference to the preceding particular words. State hospitals, training schools, reformatories or prisons are distinctly different from residential facilities commonly located throughout

communities. The facilities cited are all places of confinement. Another dictionary definition of institution is “a place of confinement, as in a mental asylum”.^[15] It seems likely that the legislature intended this prohibition to apply to institutions similar to those specifically named where inmates or patients are confined and separated from the community.

The applicant also argues that the Dayton Residence is not under the supervision or control of the Commissioner of Human Services. He suggests that licensure is different from supervision or control. He cites a dictionary definition of supervise as “to have the charge and direction of; superintend.”^[16] A dictionary definition of “control” defines it as “to exercise authoritative or dominating influence over; direct”.^[17] He notes that department personnel testified that the department is responsible for monitoring the program and argues that this is not supervision or control.

The City points out that the Department of Human Services conducts background investigations on staff, investigations of complaints, does site visits, adopts rules setting standards for the facility and has the authority to assume control of the program if necessary. It points out that the statute talks about supervision or control “in whole or in part” which implies something less than full management or staffing by the department. It notes that the statute could have specifically stated that it only applied to institutions owned, operated or staffed by the department, but does not do so.

As noted above, words in statutes are to be construed according to their common and approved usage.^[18] The common dictionary definition suggests that the legislature intended that the commissioner have charge of the institution, or direct the institution, in order to bring it within this prohibition. The commissioner clearly supervises and controls state hospitals, for example. The department’s licensing and enforcement functions as described in this record do not rise to that level. Since the proximity of the Dayton Residence was the only objection presented by the City to this application, it is recommended that the City Council approve the application.

The applicant submitted four exhibits attached to its post-hearing memorandum. The City objected to their inclusion in the record. Since these exhibits were not offered at the hearing and the City did not have an opportunity to review or object to the exhibits, they must be stricken from the record.

GAB

^[1] Ex. 1.

^[2] Ex. 2.

^[3] 42 U.S.C. 1396d.

^[4] Ex. 5.

^[5] Ex. 3.

^[6] Ex. 4.

^[7] St. Paul Legislative Code § 310.05-.06; Minn. Stat. § 14.55; Minn. Stat. § 340A.415.

^[8] *Cummings v. Koehnen*, 556 N.W.2nd 586, 589 (Minn. App 1996)

^[9] Minn. Stat. § 645.08(1)

^[10] Random House Dictionary of the English Language, (2nd Ed. Unabridged 1987)

^[11] American Heritage College Dictionary (3rd Ed. 1993)

[\[12\]](#) Minn. Stat. § 645.08(3)

[\[13\]](#) Kaiser v. Memorial Blood Center of Mpls., Inc. 486 N.W.2d 762 (Minn 1992)

[\[14\]](#) 486 N.W.2d at 766

[\[15\]](#) American Heritage College Dictionary, (2nd Ed., 1982)

[\[16\]](#) American Heritage Dictionary (1999)

[\[17\]](#) American Heritage Dictionary (1999)

[\[18\]](#) Minn. Stat. § 645.08(1)