

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of Proposed Discipline
Against the Building Mover License of
Orvin A. Voigt

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on May 23, 1995 in South St. Paul. Melissa L. Wright, Suite 500, 525 Park Street, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Department of Transportation ("Department"). Orvin A. Voigt ("Licensee"), d/b/a Voigt Movers, 10724 Cameo Circle, Glencoe, Minnesota 55336, appeared on his own behalf. The record closed at the conclusion of the hearing on May 23, 1995.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of the Department of Transportation shall not be made until this Report has been made available to the parties to the proceeding for at least twenty days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with James N. Denn, Commissioner of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

Whether the Licensee should be disciplined under Minn. Stat. § 221.81, subd. 4 for his actions related to the moving of a house at Shakopee, Minnesota in November, 1994 and, if so, what level of discipline is appropriate?

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

FINDINGS OF FACT

1. The Licensee has been in the house moving business for 22 years. He holds Building Mover License No. 147545 from the Minnesota Department of Transportation, which license expires on June 30, 1995.

2. Sometime in the fall of 1994, the Licensee entered into a contract with Bob and Diane Waker to move their house from Shakopee to rural Glencoe, Minnesota, a distance of approximately 35 miles. Voigt's fee was \$16,000 and the Wakers paid \$5000 down.

3. The Wakers' house, located on Eagle Creek Boulevard (County Road 16) on the east end of Shakopee, was situated on land that had been condemned by the state of Minnesota for construction of the highway 169-101 "bypass" south of Shakopee. By early November, 1994, the Wakers had to move the house off the condemned property or face a penalty of \$200 per day.

4. In order to move the house to Glencoe, Voigt would have to travel across the City of Shakopee from east to west (using city streets to Highway 169 South) to its intersection with Highway 41, then north on Highway 41, crossing the Minnesota River bridge at Chaska, to Highway 212 before moving west toward Glencoe. This movement required obtaining Building Moving Permits from the City of Shakopee and the State of Minnesota. At no time during this process did the Licensee obtain a Building Moving Permit from the City of Shakopee or the State of Minnesota.

5. Moving the house through the City required first gaining access to County Road 16, which lies north of the property. The driveway off the house property went down and up a rise in a fashion making it extremely difficult to move such a large object as a house. The easier way to move to County Road 16 was to move the house approximately 200 yards east across a "field road" between the house and the cul-de-sac end of a paved city street called Sharon Parkway, then down Sharon Parkway to Tyrone Drive to the County Road.

6. In response to the Wakers' concern about getting the house off the condemned land, Voigt decided to move the house to a place where they would not be subject to the penalty mentioned in Finding 3 before obtaining his moving permits. The house was too large to fit across the Highway 41 bridge, so he cut the wood structure into front and back halves and then moved each house half down the field road and off the condemned land.

7. On or about November 7, 1994, Voigt moved the front half of the house into the paved cul-de-sac at the end of Sharon Parkway in front of the house owned by Barry Dickson, 1380 Sharon Parkway, Shakopee. Dickson's is the only house on the cul-de-sac. Three other residences are on Sharon Parkway, between the cul-de-sac and the intersection with Tyrone Drive. Before the November 7 move, Voigt told Dickson he would be moving the house through and asked Dickson to move his boat and camper top off the "field road" near the paved cul-de-sac. Dickson moved his property when he went hunting the first weekend of November, and spent the early part of the November 7 work week in Rochester. He came home on November 8 or 9 and discovered the first half of the house in front of his driveway, but took no action because he assumed the house would be moved out soon.

8. On or about November 14, 1994, Voigt moved the back half of the house onto a vacant, city-owned lot next to Dickson's on the cul-de-sac. After Voigt's equipment moved on (approximately two days later), leaving the house halves abandoned in and just off the cul-de-sac, Mrs. Dickson called City of Shakopee officials to complain.

9. The two house halves remained propped up on blocks approximately five feet off the ground in the locations noted in the preceding Finding for approximately two months. In early January, 1995, the Wakers sold the house to Donald Rohnen, who

had the house moved to Roscoe, Minnesota (in Stearns County) on approximately January 14, 1995.

10. During the two months the house halves remained on and near the Sharon Parkway cul-de-sac, they created several problems (in addition to being “eyesores”), including:

- (a) Although plastic sheets had been placed over the exposed areas left after the structure was cut, the sheets soon blew away, exposing the interior of the house to trespass. Neighborhood children did trespass inside the exposed house halves;
- (b) One half of the house had an opening in the bottom (to accommodate a basement stairwell) through which trespassers could (and did) enter;
- (c) Shingles, insulation material and other debris blew off the house, littering the Dickson yard and surrounding property, including the city street;
- (d) Backing a vehicle out of Dickson’s driveway was impossible, so vehicles had to turn around in the driveway, a process made more difficult after snow began to accumulate;
- (e) Snow removal on the cul-de-sac was made impossible;
- (f) The school bus which served Dickson’s three small children and several others elsewhere on Sharon Parkway could no longer go on Sharon Parkway to the front of childrens’ homes because there was no place to turn the bus around (normally, the bus simply went around the cul-de-sac). Because the bus now stopped on Tyrone Drive, the children who had been picked up in front of their houses now had to walk outside (a 200-yard walk for Dickson’s children) and wait several minutes every day during two months of cold weather; and
- (g) Potential damage to the streets, due to the excessive weight of the structures.

11. Voigt intended to move the house halves off the condemned property and then to obtain the needed permits and proceed with the rest of the move immediately. He had moved the buildings to the locations described and had spent one or two days in the process of obtaining the permits when Mrs. Waker informed him that she had not received a building permit from local authorities at the destination point to which the house was to be moved, and that she had no money to pay the balance of the contract. The day after receiving this news, Voigt pulled out his equipment and left the houses behind. He acted on his own volition, without permission from the Dicksons, City, State or anyone else. He never returned to the site.

12. Voigt reasoned that since he was not going to be paid and the Wakers had nowhere to put the house, and because he did not want the house, he had no choice but to leave the buildings where they were. He felt he could not return them to the condemned land because of the pending penalty. He was informed that no building permit was obtained at the destination site. He did not want the house himself (no copy

of the Voigt-Waker contract was introduced, but it is presumed that he could have kept the house as security) and he was unaware until just prior to the hearing of any place where such property can be “stored”.

13. For most of the two-month period it remained on and near the cul-de-sac of Sharon Parkway, the house was fenced off by City officials in an effort to prevent vehicular access and trespass. The City considered moving it themselves and even considered burning the structures, but relented when it was learned that they were to be sold and moved.

14. Mr. Voigt faces charges in Scott County District Court on three counts of alleged violations of Shakopee City Ordinances, specifically: (1) moving a building without a permit; (2) creating a public nuisance; and (3) obstruction of a city street. Count One carries a misdemeanor penalty. Counts Two and Three are petty misdemeanors. The criminal charges have not been resolved.

15. The Notice of Hearing alleges a suspension of Voigt’s license is appropriate discipline, but suggests no specific period for suspension. At the hearing, counsel, on behalf of the Department’s Director of the Office of Motor Carrier Services, proposed a 30-day suspension as an appropriate penalty against the license for Mr. Voigt’s actions.

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

CONCLUSIONS

1. Any Finding of Fact more properly termed a Conclusion is hereby adopted as such.

2. The Administrative Law Judge and the Commissioner of the Department of Transportation have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.57-14.62 and Minn. Stat. § 221.81, subd. 4.

3. The Notice of Hearing was proper and all substantive and procedural requirements of law and rule have been fulfilled.

4. The Licensee violated Minn. Stat. § 221.81, subd. 4(b), endangering the health and safety of users of a public street, when he left a house unsecured in a public street for two months, which caused traffic safety problems and endangered neighborhood children who were attracted to trespass inside the house.

5. The Licensee violated Minn. Stat. § 221.81, subd. 4(c) by obstructing traffic when he left a house in a public street for two months.

6. The Licensee violated Minn. Stat. § 221.81, subd. 4(e) by moving a house without obtaining a local (City of Shakopee) building moving permit.

7. The Licensee violated Minn. Stat. § 221.81, subd. 4(f) when he placed or moved a building on property without permission of the owner (City of Shakopee) and in violation of local ordinances regarding moving a building without a permit, creating a public nuisance and obstructing city streets.

8. The Licensee violated the intent of Minn. Stat. § 221.81, subd. 4(g) by abandoning a building when he left a house he had moved only 200 yards without completing the move to its intended location. The only reason he has not violated the letter of subdivision 4(g) is that the subdivision assumes a licensee has violated a permit by abandoning the building. The Licensee never obtained a permit to violate.

9. The proposed suspension of the Licensee's Building Moving License for 30 days is reasonable discipline for violation of the statutory provisions noted at Conclusions 4 through 8.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of the Department of Transportation suspend the Building Moving License of Orvin A. Voigt for 30 days.

Dated this 21st day of June, 1995

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Administrative Law Judge cannot accept the Licensee's defense for abandoning the house he had started to move. The fact that the owner could not pay him is no excuse for leaving such an obvious public nuisance on a city street where it obstructed traffic and prevented access to residential property. The record fails to support Mr. Voigt's argument that he had "nowhere to go" with the house. The simplest solution would to have been to return the house to the condemned property, a journey of only 200 yards. He would have been no worse off financially (he had the \$5000 down payment), and the \$200 per day penalty against the Wakers should not have been his concern. To abandon the property and never return, when weighed against the reasonable alternative outlined here, was to exercise extremely poor judgment.

In addition, moving the house at all without a City permit is a blatant violation of the applicable statute, and, by implication, of the terms of a Building Mover License. As a result, a 30-day suspension of Voigt's license, as recommended by counsel and the Department, is appropriate.

RCL