

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

In Re the Application for Renewal  
of Saint Paul Taxicab Driver's  
License of Joseph C. Huber,  
License No. 20030002635

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Allan W. Klein on December 21, 2004, at the Saint Paul City Hall. The hearing was held pursuant to Notice of Hearing dated November 19, 2004. Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, appeared on behalf of the City's Office of Licensing, Inspections and Environmental Protection (LIEP). Keith Ellison, Ellison Law Offices, 2100 Plymouth Avenue N., Minneapolis, Minnesota 55411, appeared on behalf of the Licensee, Joseph C. Huber. The hearing concluded on December 21, 2004. There were no additional submissions and the hearing record closed at the conclusion of the hearing.

**NOTICE**

This report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation.<sup>[1]</sup> Pursuant to St. Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Donald Luna, City Clerk, City of Saint Paul, 170 City Hall, 15 West Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting argument.

**STATEMENT OF THE ISSUES**

The issues presented at this hearing were:

Does the Licensee's possession of a handgun without a permit and the presence of marijuana in his taxicab constitute issues relating to character and fitness to hold a taxicab driver license?

Did the City demonstrate that the Licensee does not meet the good character and fitness requirement for renewal of his taxicab driver license?

**FINDINGS OF FACT**

1. Joseph C. Huber (“Licensee”) was licensed by the City of Saint Paul (“City”) as a provisional taxicab driver on June 18, 2003. Licensee received an unrestricted taxicab license on May 26, 2004, which expires on June 17, 2005.<sup>[2]</sup> All such licenses must be renewed annually. As part of the renewal application process, the City checked the Licensee’s criminal background.

2. Christine Rozek is the Deputy Director of LIEP. She is responsible for reviewing taxicab license applications when a record check reveals possible problems. In response to her request for information, Ms. Rozek received a report from the State Bureau of Criminal Apprehension disclosing the Licensee’s misdemeanor conviction for possession of a pistol without a permit. The City Attorney’s Office requested a copy of the police report that gave rise to the criminal charge. Ms. Rozek reviewed the police report and the conviction information from Hennepin County Criminal Court.<sup>[3]</sup> Based on this information, she concluded that the Licensee had engaged in conduct displaying a lack of good character or fitness to hold a taxicab license. Since the conviction involved a number of violations, occurred inside a cab, and involved conduct that could affect customers or the Licensee’s driving ability, Ms. Rozek recommended that the Licensee’s renewal application for a taxicab license be denied.<sup>[4]</sup>

3. The Licensee was sent a Notice of Intent to Deny Renewal License Application, dated August 2, 2004. The factual basis for the denial was a police report indicating that the Licensee was observed in a possible narcotics transaction and that a pistol and two bags of suspected marijuana were found in the Licensee’s possession in his taxicab. The Licensee’s subsequent conviction for possession of a pistol with a permit was also cited as a basis for denial of the Licensee’s application for renewal. The City cited St. Paul Legislative Code § 310.06 (lack of good character or fitness) as the reason for the denial.<sup>[5]</sup>

4. On August 12, 2004, the Licensee appealed the application denial.<sup>[6]</sup> Accordingly, this hearing was scheduled.<sup>[7]</sup>

5. On October 4, 2003, Officers Gorman and Torborg of the Minneapolis Police Department (MPD) were patrolling in the vicinity of 24<sup>th</sup> and Lyndale. Over a two-hour period, these officers observed one individual, a young man, who was loitering in the vicinity of that intersection and who obscured his face each time the officers came through the area.<sup>[8]</sup>

6. The officers parked their squad car out of sight of the intersection and occupied a vantage point to observe this person’s conduct. The officers observed him providing an audible signal every time an MPD squad car approached, moving between a nearby house and the parking lot of Wafana Foods (a convenience store), and engaging in three hand-to-hand exchanges with persons passing through the area. Based on their experience, the officers described the behavior as “consistent with that of a person selling narcotics ....”<sup>[9]</sup>

7. On October 4, 2003, the Licensee was driving a taxicab for Green and White cabs.<sup>[10]</sup> The Licensee normally drove his cab in the suburbs and in Saint Paul, where he was licensed. The Licensee is not licensed to pick up fares in Minneapolis.

8. At approximately 10:00 p.m. on October 4, 2003, a Green and White taxicab pulled into the parking lot of Wafana Foods. Officers Gorman and Torborg noted that the driver did not get out of the taxicab for several minutes. When the driver exited the cab, he was approached by the young man that they had been observing. A brief hand-to-hand exchange occurred, the driver immediately reentered his taxicab and began to drive away. The young man then called out the taxicab driver. The cab stopped, the young man entered the back seat and the cab drove off. Officer Gorman radioed to all nearby squad cars that he had observed suspected illegal activity by the driver of a Green and White taxicab at 24<sup>th</sup> and Lyndale. Officer Gorman suggested that the taxicab be stopped.<sup>[11]</sup>

9. MPD Officers McGinty, Lewis, and Rabine received Officer Gorman's broadcast message regarding suspected illegal narcotics activity by the driver of a Green and White taxicab at 24<sup>th</sup> and Lyndale. Soon after receiving the message, Officer McGinty spotted a Green and White taxicab at 26<sup>th</sup> and Knox (approximately one-half mile from 24<sup>th</sup> and Lyndale). Officers Lewis and Rabine trained the spotlight of their MPD squad car on the taxicab and made a u-turn to follow the Licensee's cab. The Licensee immediately pulled over and waited for the police.

10. While waiting for the police, both the Licensee and his passenger began moving around and bending over in their seats. The officers making the stop observed this behavior.<sup>[12]</sup> Officer McGinty shone his flashlight onto the driver's side front seat of the taxicab and observed two small plastic sandwich bags that appeared to be marijuana on the floor below the driver's seat.<sup>[13]</sup> Officer McGinty informed Officer Lewis that packages appearing to be marijuana were visible in the front of the taxicab.

11. The officers had Licensee and his passenger exit the taxicab. The passenger acknowledged that he was in possession of "weed."<sup>[14]</sup> Officer Rabine conducted a "pat down" search of the passenger and dislodged a small plastic sandwich bag that appeared to contain marijuana from the cuff of passenger's right pant leg. The pant cuff had been rolled up slightly.<sup>[15]</sup> Officer Rabine questioned the passenger in the squad car. The passenger stated that he did not have any weapons, that he did not know the cab driver, and that he had been picked up by the taxicab at 24<sup>th</sup> and Lyndale in Minneapolis. The passenger was cited with loitering with the intent to commit a crime.

12. Officer Lewis observed the two packages lying on the floor of the cab at the driver's position. While retrieving those two packages, Officer Lewis observed a holstered handgun underneath the driver's seat. He retrieved the handgun and unloaded it.<sup>[16]</sup>

13. Officer Lewis inquired as to whether Licensee had a permit to carry the pistol. The Licensee admitted that he did not. The Licensee was taken into custody and charged with the gross misdemeanor offense of carrying a pistol without a permit in violation of Minn. Stat. § 624.714, subd. 1a. On June 22, 2004, the Licensee plead guilty to the offense, for which the Licensee received a misdemeanor sentence.<sup>[17]</sup>

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

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Saint Paul City Council have jurisdiction in this matter.<sup>[18]</sup>

2. The Applicant received timely and proper notice of the hearing and the City has complied with all relevant substantive and procedural requirements of statute and rule.<sup>[19]</sup>

3. The City has authority to deny, suspend or revoke a license and to impose penalties for violation of applicable statutes and rules.<sup>[20]</sup>

4. The City has the authority to deny renewal of a taxicab license to a person who lacks the good character and fitness required of licensees.<sup>[21]</sup>

5. The City has shown by a preponderance of the evidence that the Licensee does not have the good character and fitness required for renewal of a taxicab driver's license.

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the City of Saint Paul DENY the application for renewal of the taxicab driver's license of Joseph C. Huber.

Dated this 13<sup>th</sup> day of January, 2005.

/s/ Allan W. Klein  
ALLAN W. KLEIN  
Administrative Law Judge

Reported: Tape-recorded (one tape), no transcript prepared.

## MEMORANDUM

The Saint Paul Legislative Code expressly provides for adverse action, including nonrenewal, of a taxicab driver's license, stating:

(j) *Suspension, revocation and nonrenewal.* A taxicab driver's license may be revoked, suspended or not renewed by the license inspector at any time for cause pursuant to the provisions of this chapter and Chapter 310 of the Legislative Code. When a taxicab driver's license has been revoked or suspended, it shall immediately be returned to the license division. If the city council stipulates that a licensee whose taxicab driver's license has been revoked may reapply after a specific period of time has elapsed, that period of time shall not commence until the taxicab driver's license has been returned to the license division.<sup>[22]</sup>

Chapter 310 of the Legislative Code is the City's uniform licensing procedure, and includes taking adverse action against a City-issued license where the conduct of the licensee has a bearing on the activity authorized by the license. Chapter 310 states in pertinent part:

### **Sec. 310.06. Revocation; suspension; adverse actions; imposition of conditions.**

(a) *Council may take adverse action.* The council is authorized to take adverse action, as defined in section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters. ...

\* \* \*

(b) *Basis for action.* Such adverse action may be based on one (1) or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:

\* \* \*

(6) c. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has engaged in or permitted a pattern or practice of conduct of failure to comply with laws reasonably related to the licensed activity or from which an inference of lack of fitness or good character may be drawn.<sup>[23]</sup>

The City cites two separate grounds for denial of Licensee's renewal application; the unpermitted handgun and the possession of marijuana. The Licensee maintains that he had the handgun in his cab as a reaction to the shootings of several taxicab drivers in Minneapolis and that he only the weapon in his cab for a day or two before it was discovered by the MPD.<sup>[24]</sup> The shootings all took place in the summer of 2003. The Licensee was stopped with the handgun in his possession on October 4, 2003.<sup>[25]</sup>

The Licensee maintained at the hearing that the City lacks “probable cause” to find that the Licensee was in possession of marijuana on October 4, 2003. The standard for probable cause is not nearly so high as maintained. The Licensee stopped at a convenience store, did not enter the store, and engaged in some sort of exchange with an individual who had been engaged in behavior consistent with selling controlled substances. These observations, in the opinion of a police officer observing the scene, constituted a reason to stop the Licensee’s cab on suspicion of possession of controlled substances.<sup>[26]</sup> This conduct, without more, constitutes probable cause to stop the vehicle.

At the time the MPD stopped the Licensee’s taxicab, the officers observed furtive behavior by both the Licensee and his passenger. Adding that behavior to the report of an apparent narcotics transaction, observed shortly before outside the convenience store, provided ample probable cause for the officers to inquire about the Licensee’s actions. When the officers approached the vehicle, a substance appearing to be marijuana was in plain sight. No further information was required for the officers to seize the marijuana from the taxicab.<sup>[27]</sup>

The Licensee maintained that the marijuana was all in the possession of his passenger, and that the passenger must have thrown it under the seat when the police stopped the taxicab. But his passenger rolled a bag of marijuana into his pant cuff. This behavior is consistent with hiding the marijuana from the officers, not discarding it. The concealment of the marijuana is likely to have occurred when the MPD officers pulled over the taxicab.<sup>[28]</sup> While the scenario described by the Licensee is possible, the evidence supports the conclusion that the Licensee purchased the marijuana in the convenience store parking lot in the manner related by Officer Gorman in his written report.

Based on the evidence presented, the City has shown by a preponderance of the evidence that the Licensee was illegally in possession of a handgun and was in possession of marijuana. This conduct occurred while the Licensee was operating his taxicab. This conduct has a bearing on the Licensee’s character and fitness for operating a taxicab under licensure by the City. The City has shown by a preponderance of the evidence that the Licensee lacks the good character and fitness to have his taxicab driver license renewed. Accordingly, the ALJ recommends that Mr. Huber’s application for renewal of his taxicab license be denied.

A.W.K.

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<sup>[1]</sup> St. Paul Legislative Code § 310.05 (c-1).

<sup>[2]</sup> Ex. 1, at 3.

<sup>[3]</sup> Exs. 2 and 3.

<sup>[4]</sup> Testimony of Rozek.

<sup>[5]</sup> Ex. 4.

<sup>[6]</sup> Ex. 5.

<sup>[7]</sup> Ex. 7.

<sup>[8]</sup> Ex. 2, at 4.

<sup>[9]</sup> Ex. 2, at 4.

<sup>[10]</sup> Testimony of Licensee. The Licensee leased the cab from Green and White and drove it from his home, rather than from the cab company garage. The Licensee resides in Minneapolis, in the vicinity of Wafana Foods and the other locations identified in this Recommendation.

<sup>[11]</sup> Ex. 2, at 4.

<sup>[12]</sup> Testimony of Officer Lewis.

<sup>[13]</sup> Ex. 2, at 6.

<sup>[14]</sup> A common slang expression that the officer recognized as meaning marijuana.

<sup>[15]</sup> Ex. 2, at 3.

<sup>[16]</sup> Ex. 2, at 3.

<sup>[17]</sup> Ex. 3.

<sup>[18]</sup> Saint Paul Legislative Code §§ 310.05, 376.16; Minn. Stat. § 14.55.

<sup>[19]</sup> See Minn. Stat. § 14.57 – 14.61; Saint Paul Legislative Code § 310.05.

<sup>[20]</sup> Saint Paul Legislative Code §§ 310.06 and 376.16(j).

<sup>[21]</sup> Saint Paul Legislative Code § 310.06(b)(6).

<sup>[22]</sup> Saint Paul Legislative Code § 376.16(j).

<sup>[23]</sup> Saint Paul Legislative Code § 310.06.

<sup>[24]</sup> Testimony of Licensee.

<sup>[25]</sup> Further, the Licensee identified the time when he was stopped as being during the “summer.” This misdescription supports the conclusion that the Licensee possessed the handgun in his cab for a longer period of time than he testified to at the hearing.

<sup>[26]</sup> “[A] trained police officer is entitled to draw inferences on the basis of all of the circumstances[,] . . . inferences and deductions that might well elude an untrained person.” **State v. Johnson**, 444 N.W.2d 824, 826 (Minn. 1989) (citing **United States v. Cortez**, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981)). Evaluation of the whether an officer’s suspicion of criminal activity was reasonable at the time of the stop is based on the totality of the circumstances. **State v. Jobe**, 609 N.W.2d 919, 921 (Minn.App. 2000).

<sup>[27]</sup> Items in “plain view” can be seized by police without a warrant, so long as the police have probable cause to believe that an item is contraband, stolen property, or evidence of crime. **State v. Zanter**, 535 N.W.2d 624, 632 (Minn. 1995) (citing **Texas v. Brown**, 460 U.S. 730, 742, 103 S. Ct. 1535, 1543 (1983)).

<sup>[28]</sup> When the officers observed the passenger bending over in the back seat of the taxicab.