

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

In the Matter of the Tattoo Parlor License
of Jennifer E. Cobb, d/b/a Planet Ink.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

This matter came on for hearing on November 16, 2004 before Administrative Law Judge (ALJ) Richard C. Luis in Room 41, St. Paul City Hall. Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 Kellogg Boulevard, St. Paul, MN 55102, represented the Office of License Inspections and Environmental Protection of the City of St. Paul ("City", "LIEP"). Jennifer E. Cobb (a.k.a. Jenny Johnson), d/b/a Planet Ink, 1499 University Avenue West, St. Paul, MN 55104, represented herself ("Licensee", "Respondent"). She was assisted by her daughter, who is also named Jenny Johnson. The record closed at the conclusion of the hearing on November 16, 2004.

NOTICE

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. The Council may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations herein. Under § 310.05(c-1) of the St. Paul Legislative Code, the Council will provide the parties an opportunity to present oral or written argument before it takes final action. The parties should contact Don Luna, St. Paul City Clerk, 170 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, (651) 266-8688 for information regarding the presentation of argument to the Council.

ISSUES

Should disciplinary action be taken against the Tattoo Parlor License held by Jennifer E. Cobb, d/b/a Planet Ink, for placing tattoos on an under-aged girl and for failing to comply with applicable health and safety requirements?; and

What is the appropriate level of discipline?

The Administrative Law Judge recommends that the Licensee be disciplined only for violation of health and safety requirements, in the amount of \$600.

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

FINDINGS OF FACT

1. Shortly before February of 2004 (in December 2003 and/or January 2004), C.H., a high school student in St. Paul, had two tattoos placed on or just under her skin. One is a large tattoo depicting a musical note, and is located on the upper area of one of her shoulders. The second, smaller tattoo is a star, located behind one of her ears. C.H. was born on January 18, 1987, so she was either 16 or 17 years old when the tattoos were created.

2. In February, 2004, C.H. was modeling a new dress for her mother, J.H. J.H. asked C.H. to turn around in the dress and C.H. declined. After the mother insisted and the daughter complied, J.H. discovered her daughter's tattoos. J.H. had forbidden her daughter from being tattooed, and both mother and daughter knew it was illegal in St. Paul to administer a tattoo to anyone under age 18.^[1]

3. J.H. asked her daughter where she received the tattoos, and C.H. responded that it was "at Planet Ink across University Avenue from the Perkins Restaurant". C.H. told her mother that she and a friend went into the place and the man did not ask for identification but let each of them "vouch for each other" about their ages.^[2]

4. J.H. was upset that her daughter was able to get a tattoo illegally, and contacted the St. Paul Office of License Inspections and Environmental Protection (LIEP) to make her concerns known. Sometime in March, 2004, she visited Planet Ink's establishment at 1499 University Avenue. She asked no specific questions about her daughter's allegations, but learned only that the establishment's personnel were aware that one had to be 18 years old to receive a tattoo. During her short visit, J.H. noticed that the premises had a "funky smell"^[3], to the point that it "stunk real bad" and was "appallingly dirty".^[4]

5. C.H. requested subsequently that a health inspection be performed at Planet Ink, based on her observations. During the late afternoon of March 12, 2004, Barbara McMonigal-St. Dennis, an inspector with LIEP's Environmental Health Division, spent nearly 90 minutes inspecting Planet Ink's premises, and found many items of health and safety concern.^[5] The inspector found that J.H.'s complaint about a dirty, unclean tattoo shop was valid. She observed soiled, unsanitary areas throughout the premises. Following the inspection, McMonigal-St. Dennis discussed the situation with the owner, Jennifer Cobb, who shut the business down voluntarily to pursue the "massive cleaning and sanitizing" needed to put the premises in order.^[6]

6. Among the deficiencies observed by McMonigal-St. Dennis on March 12, 2004 were:

- (a) A large "Buzz Lightyear" toy on the counter used for breaking down tattoo equipment. The counter should be kept clear;
- (b) Soiled floors;
- (c) Inadequate or no sanitizer solution to clean the area;
- (d) Damaged vinyl flooring (an unapproved surface);

- (e) Improperly stored tattooing needles;
- (f) Improper use of the “autoclave” device used to sterilize tattooing equipment;
- (g) Dirty garbage and refuse storage area, facility dirtied in general by cigarette butts, burn marks, seeds and debris from a bird cage, personal care items strewn about, dirt and debris throughout much of the premises;
- (h) Improper wall surface (bare, unsealed wood);
- (i) Inadequate, incomplete records of customer contacts; and
- (j) Cigarette butts found in a work area (evidence of smoking in a prohibited location).^[7]

7. Ms. McMonigal-St. Dennis re-inspected the Planet Ink facility on March 16, 2004 and authorized it to re-open because substantial progress had been made to clean up the premises. The City has not shut down Planet Ink since then, but the establishment has closed down voluntarily for remodeling at certain times.

8. On April 15, 2004, City License Inspector Richard Jents met with Planet Ink’s owner to review its customer records. No records, including the consent forms for December 2003 and January 2004, revealed the name of C.H. Jents’s review corroborated J.H.’s statement that her daughter was not asked to fill out a consent form or other paperwork at Planet Ink, but failed to establish that C.H. was ever there at all.

9. A follow-up inspection by McMonigal-St. Dennis on May 17, 2004 was incomplete. The establishment was closed for remodeling of the floors and counter areas. Also on May 17, Jennifer Cobb (owner of Planet Ink) provided the inspector with a “Daily Duties” sheet stating Planet Ink’s policy for consent forms, cleaning counter areas, breaking down of tattooing equipment, trash removal and floor maintenance.

10. On June 28 and 30, 2004, a flooring installation contractor by Planet Ink presented plans at the LIEP Office for replacing the floor at Planet Ink with conforming material.

11. Ms. McMonigal-St. Dennis returned for a follow-up visit to Planet Ink on October 26, 2004. She was escorted around the shop by Jennifer Cobb. By then, the Licensee had spent \$5,000 to renovate the premises.^[8] The inspector found that Studio 1 was locked from the inside and could not be accessed (the tattoo artist would climb in to open it, and he was absent). Tattoo Studio 2 had been remodeled, with a new counter and flooring material. The business’s record-keeping was better, but still deficient. The picture IDs of customers were copied on the back of their release forms, but some of the release forms were missing dates, some were unsigned by the customers, and none of them recorded the name of the tattoo artist who worked on the customer(s) identified.

12. C.H. told her mother either that the tattooist who worked on her was a light-skinned African-American male or a Latino male. Planet Ink has never employed or

used an African-American tattoo artist. It has employed two Latino tattoo artists, both of whom were hired on or after April, 2004.

13. The tattoo artists at Planet Ink are independent contractors. They charge so much for each job and give back one-third of the fee to Planet Ink. That is how Planet Ink is compensated for the use of the space. Neither Jennifer Cobb nor Jenny Johnson are tattoo artists. During the time when C.H. received her tattoos, there were two tattoo artists on Planet Ink's premises. The artist who used Studio 1 was a Caucasian male in his forties. The other was a Caucasian male in his twenties. The 40-something male was barred subsequently from working at Planet Ink because he did not report (register) all the customers he serviced. On those not registered, the artist kept the entire fee and did not compensate Planet Ink as required by his contract.

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

CONCLUSIONS

1. The Administrative Law Judge and the City Council have jurisdiction in this matter pursuant to Minn. Stat. § 14.55 and § 310.05 of the City's Legislative Code.

2. 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.

3. Any of the foregoing Findings more properly considered Conclusions are adopted as such.

4. The City has established by a preponderance of the evidence that Planet Ink violated St. Paul Legislative Code § 310.06(b)(7) by maintaining dirty and unsanitary conditions at its premises located at 1499 University Avenue West in St. Paul. The Licensee does not contest the City's allegations in this regard.

5. The City has not proven that C.H., a minor born January 17, 1987, received tattoos at Planet Ink in late 2003 or early 2004.

6. The City proposed a fine of \$1,000 against Planet Ink for failure to operate its premises in a safe, sanitary manner and for allowing a minor to obtain two tattoos at its establishment. Since the City has not proven that Planet Ink allowed a minor to obtain tattoos on its premises, it is appropriate to reduce the total penalty (\$1,000 fine) proposed by the Office of Licensing, Inspections and Environmental Protection.

7. A fine of \$600 is appropriate for the violations of health and safety regulations committed by Planet Ink, as shown in the dirty, unsanitary conditions existing on the premises between February and May of 2004.

Based on the conclusions above, the Administrative Law Judge makes the following:

RECOMMENDATIONS

IT IS RECOMMENDED that the St. Paul City Council DISMISS the allegation that Planet Ink administered tattoos to a minor without checking her identification in December 2003 or January 2004;

IT IS RECOMMENDED FURTHER that the Council AFFIRM the Findings of the Office of Licensing, Inspections and Environmental Protection that unsanitary conditions in violation of health and safety regulations existed on the premises of Planet Ink;

IT IS RECOMMENDED FURTHER that the fine proposed by the City's Office of Licensing, Inspections and Environmental Protection be reduced from \$1,000 to \$600; and

IT IS RECOMMENDED FURTHER that the continued operation of Planet Ink be contingent on future compliance with all applicable rules and regulations and on compliance with an agreement to require customers to present picture identification to establish their age, to record the dates tattoos are administered, the customer's name and signature, the name of the tattoo artist in each instance and a copy of the customer's picture identification.

Dated this 10th day of December, 2004.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

MEMORANDUM

Planet Ink had no defense to the filthy, unsanitary conditions of its premises recorded in the inspection reports and recalled by the LIEP office's inspector in testimony at the hearing. Those allegations are uncontested. As noted in Ms. Cobb's appeal letter of October 7, she disputes only the charge that Planet Ink has placed tattoos on minors. Her denial at the hearing that such a practice has ever been done at Planet Ink, and her denial that Planet Ink has ever engaged the services of an African-American tattoo artist and assertion that no Latino artists were hired until after the incident(s) alleged, were convincing. Planet Ink has instituted a practice to require picture identification of all customers, and to attach a copy of the customer's driver's license or other identification to the release forms it requires each customer to sign. Ms. Cobb also has terminated the services of the tattoo artist who had been cheating Planet Ink by not recording all the work he performed. It is the City's burden to prove by the greater weight of the evidence that C.H. received her tattoos at Planet Ink. That burden has not been met. The only evidence pointing to Planet Ink as the site where C.H. was tattooed is her mother's statement that C.H. told her so. That evidence is hearsay, and it is the Administrative Law Judge's opinion that it is not sufficiently reliable in this case to outweigh the evidence that the tattooing did not occur at Planet Ink. The City's case

is weakened more by the convincing rebuttal by Planet Ink to the hearsay allegation that C.H. told her mother that the tattoo artist was African-American or Latino.

The Judge is troubled by the fact that C.H. herself has offered no evidence, written or testimonial, that her tattoos were administered at Planet Ink. Counsel for the City argues that C.H. had no reason to lie to her mother about where she got the tattoos. The ALJ is not convinced. He believes it is natural for a minor to be deceitful about the circumstances surrounding a forbidden, illegal action that she has tried to keep secret. It is also natural not to want to return to the true “scene of the crime,” and to try to lay the blame on a different tattoo shop, especially if she lied about her age in order to get the tattoos. It is also normal not to accompany one’s parent to the place you accused falsely of creating your tattoos. Counsel for LIEP argues that a girl wanting to conceal where she got the tattoos would not have thought about claiming a specific alternative site like Planet Ink, an argument with which the judge disagrees. “Planet Ink” is a catchy, clever name for a tattoo parlor, and the location on University Avenue is central and convenient. C.H. well could have known of its existence and purpose, and thought of it as a place to blame. These speculations are immaterial -- what matters most is that the allegation is pure hearsay and should be discounted accordingly.^[9]

The Judge recommends a reduction in the proposed fine, from \$1,000 to \$600, for the unsanitary conditions found and not contested. Counsel for LIEP suggests the conditions at Planet Ink were so awful, as reflected in the record, to merit a \$1,000 fine standing alone. The ALJ cannot agree. No specific evidence exists to suggest how much of the \$1,000 proposed fine is attributable to the charge of illegally tattooing minors and/or not checking customers for proof of age, but common sense dictates that it was worth a portion of the \$1,000 total fine. Also noted is that the Licensee already spent \$5,000 on renovations. The Administrative Law Judge arrived at a final recommended figure of \$600 for the health and safety violations because they were serious and continued over some time.

The recommendation for requiring presentation of a picture identification and compliance with other record-keeping procedures is that of Christine Rozek, the LIEP’s Deputy Director in charge of environmental health licensing. The ALJ agrees with her recommendation because, even as late as October, 2004, seven or eight months after deficiencies were uncovered at Planet Ink, the shop still was not following such basic bookkeeping procedures.

R.C.L.

^[1] See St. Paul Legislative Code, § 367.05.

^[2] Testimony of J.H. C.H. did not testify.

^[3] Testimony of J.H.

^[4] Ex. 6, Letter from J.H. to Christine Rozek, Deputy Director of LIEP, 3/18/04.

^[5] Ex. 7, Emergency Inspection Report, 3/12/04.

^[6] Ex. 3, Memo from McMonigal-St. Dennis to Christine Rozek.

^[7] Ex. 7, Emergency Inspection Report, 3/12/04; and Ex. 4, Inspection Report, 5/17/04.

^[8] Testimony of Jennifer Cobb.

^[9] J.H. testified also about the reputation of Planet Ink, based on what her daughter's friends told the daughter, which the daughter then told to the witness. This multi-layered hearsay was discounted completely by the Judge in weighing the evidence presented by the City.