

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

In the Matter of all Licenses Held by M.
Reaney, Inc. d/b/a Reaney's Bar for the
Premises Located at 870 Payne Avenue
in St. Paul; License ID No. 0016230

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

A hearing in this matter was held on January 7, 2005, at the St. Paul City Hall before Allan W Klein, Administrative Law Judge. After some testimony was taken, the hearing was reset until January 21, in order to obtain testimony of an additional witness.

Appearing on behalf of the Office of License, Inspections and Environmental Protection for the City of St. Paul (hereinafter "LIEP") was Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102.

Appearing on behalf of M. Reaney, Inc. d/b/a Reaney's Bar (hereinafter "Reaney's") was Melvin Reaney, 1752 Bush Avenue, St. Paul, MN 55106.

The record in this matter closed on January 21, at the conclusion of the hearing.

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 City Council may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation herein. Under Section 310.05(c-1) of the City's Legislative Code, the City Council will provide Reaney's an opportunity to present oral or written argument to it before it takes final action. Reaney's should contact the St. Paul City Clerk to learn the procedure for presenting argument to the council.

STATEMENT OF ISSUES

1. On May 21, 2004, did Reaney's sell alcohol to an obviously intoxicated person in violation of Minn. Stat. § 340A.502?

2. On August 4, 2004, did Reaney's permit an underage person to drink alcoholic beverages in violation of Minn. Stat. § 340A.503, subd. 1(a)(1)? Did Reaney's sell alcoholic beverages to an underage person in violation of Minn. Stat. § 340A.503, subd. 2(1)?

3. On December 5, 2004, did Reaney's violate Ch. 409.08 (15) of the City's Legislative Code when a customer walked out of the bar carrying a can of beer, took a sip of the beer, and then went back inside the bar?

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

FINDINGS OF FACT

1. Reaney's Bar is located at 870 Payne Avenue, at the corner of Payne and Wells Street, on the east side of St. Paul.

2. The corporation M. Reaney, Inc. holds a number of licenses from the city, including an on-sale liquor license, an on-sale Sunday liquor license, an off-sale malt liquor license and a Class C restaurant license.

3. On May 21, 2004, St. Paul Police Officers Michael Dunaski and Joe Reginek were dispatched to Reaney's Bar because an individual had telephoned the police department indicating that her boyfriend had taken her truck without permission and had gone to Reaney's, where he was drinking. She was afraid that he would become intoxicated and attempt to drive the truck and she did not want that to happen.^[1]

4. Officers Dunasky and Reginek ran a license check on the boyfriend (James Roscoe Crittenden) and discovered that his driver's license had been revoked. They also viewed his photograph. They entered the bar, and saw only one person who resembled the photograph. The individual was sitting at the bar, conversing with the bartender. The officers approached them, and asked the individual his name. He replied: "Eugene." Officer Reginek then asked the bartender (Eleanor Johnson) whether she knew a James Crittenden. She looked toward "Eugene" and replied "no." Officer Dunasky then turned to Crittenden and asked to see his ID. Crittenden responded belligerently, and Officer Dunasky "assisted him off the barstool" and walked him toward the door. Crittenden pulled away from him, and Officer Dunasky and Reginek both walked him toward the door. Officer Dunasky removed his wallet and keys, and found a Minnesota identification for Eugene Crittenden. Officer Dunasky then asked the individual whether or not he was James Crittenden, and the individual replied that he was, and that the ID belonged to his brother. Crittenden appeared intoxicated, and admitted that he had drunk "several beers" since entering the bar. Officer Dunasky locked the truck keys in the truck, and notified the complainant. He and Officer Reginek then took Crittenden to Detox, where he blew a .174 on the PBT. They gave him a ticket for driving after revocation and giving false information, and released him to the Detox staff. They prepared an offense/incident report, which was reviewed by LIEP staff and the County Attorney's office, resulting in the issuance of a tag to Reaney's for providing alcoholic beverages to an obviously intoxicated person.

5. On the night of August 4, 2004, Officer Jason Brubaker was among a group of eight officers who performed a "premise check" at Reaney's Bar. That night the group inspected three bars, as well as the Dorothy Day area, looking for illegal activity. As he entered Reaney's, Brubaker observed a man and woman sitting side by side on the western end of the bar. The man looked at the officers coming through the door, and pushed away a glass of beer which was sitting in front of him. Brubaker also

noticed that the man had been talking with the woman, but when he saw the officers, he turned away from the woman and looked at the wall and the floor. Brubaker thought he looked young, and so he approached the man and asked him how old he was. The man replied that he was 20 years old. Brubaker then asked the man if he had been drinking, and he said "yes." Brubaker asked to see his ID, and it confirmed that he was Jason Ratney and that he was 20 years old. Brubaker asked him if he knew that it was illegal to drink at his age, and the man replied that he did know that. Brubaker issued him a citation for underage consumption. Brubaker then spoke to the bartender, Jerry Jolly. Brubaker asked Jolly if he had checked the man's ID, and Jolly replied that he had not, but that he had seen him in the bar before. Brubaker asked Jolly why he had served him alcohol, and Jolly replied that he thought he had ID'd him before, and that he was 21 years of age.

6. At the hearing, Jerry Jolly testified that the female was a regular customer, and he served her gin with beer in a glass, but that he never served the man anything. Based upon all of the circumstances and the testimony of Officer Brubaker, the Administrative Law Judge does not find Jolly's testimony to be credible.

7. After review by LIEP and the City Attorney's Office, Reaney's was cited for permitting a person under the age of 21 years to drink alcohol on the premises and for selling alcoholic beverages to a person under 21 years of age.

8. On December 5, 2004, Joe Larsin, a bartender at Reaney's, called for police assistance because two persons refused to leave the bar after he told them to leave. As soon as they saw that he was serious about calling the police, they stepped outside the bar. Larsin then called the police and told them that they didn't have to come. By that time, however, Officers Reginek and Dunasky were responding to the initial call. Even though they got a second call from their dispatcher, indicating that they were no longer needed, they did continue on to Reaney's, and as they pulled up outside the bar, they noticed two people standing outside the bar. While they were talking with those two, a third customer who was still in the bar (and not associated with the other two) saw the police car and stepped outside to see what was happening. He looked at the situation for a few seconds, took a sip of beer out of his can, and then went back inside. He was outside for less than 15 seconds. But Officer Dunasky saw him with the can of beer and saw him take a sip from it. Officer Dunasky recognized him as a regular in the area (his name was Fernando Anderson) and remembered that he had issued a ticket to Anderson previously. He followed Anderson into the bar, and asked him why he had gone outside. Anderson replied that he just wanted to see what was going on. Dunasky smelled a strong odor of beer on his breath and took Anderson to the squad car, issuing him a citation for consuming illegal beverages in public. In his report of the incident,^[2] Dunasky noted that the bartender working at Reaney's at the time was "Joe" (later identified as Joe Larsin) and that it did not appear that any other staff were working, nor were there any bouncers present. Neither Dunasky nor Reginek spoke with Larsin about the incident. Larsin acknowledged that there were 15 to 20 people present, and that he was working alone that night. There were no bouncers at the door. After LIEP and the City Attorney's Office reviewed the police report of

Anderson's citation, they decided to issue a citation to Reaney's for permitting a person to leave the bar with an alcoholic beverage.

9. On October 15, 2004, the City Attorney's Office sent Reaney's a Notice of Violation relating to the two incidents on May 21 and August 4. The notice indicated that LIEP would be recommending a 30-day suspension of Reaney's licenses, with 15 of the days stayed for a period of 18 months, on the condition that Reaney's pay a \$2,000 fine and have no further violations.^[3]

10. On October 25, 2004, Melvin Reaney requested a hearing on both incidents.^[4]

11. On November 17, 2004, the City Attorney's Office issued a Notice of Administrative Hearing on the first two violations, setting a hearing for November 30, 2004. The hearing was not held on that date but was continued.

12. On December 17, 2004, the City Attorney's Office issued a Notice of Violation with regard to the December 5 incident. The notice indicated that if Reaney's desired a hearing on this alleged violation, it could be combined with the earlier ones.^[5]

13. On December 23, 2004, Melvin Reaney requested a hearing on the violation, and requested that it be combined with the two earlier violations.^[6]

14. On December 14, 2004, the City Attorney's Office had issued a Notice of Administrative Hearing, setting it for January 7. The hearing did go forward on that date, but it was recessed until January 21 in order to allow Reaney's to subpoena a witness. The hearing concluded on January 21.

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

CONCLUSIONS

1. The City Council of the City of St. Paul and the Administrative Law Judge 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. Minn. Stat. § 340A.502 provides that no person may sell alcoholic beverages for the use of an obviously intoxicated person. On May 21, 2004, Reaney's did sell an alcoholic beverage to James Crittenden when he was obviously intoxicated. See, Memorandum.

4. Minn. Stat. § 340A.503, subd. 1(a) makes it unlawful for a licensee to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises. Section 340A.503, subd. 2 makes it unlawful for any person to sell

or give alcoholic beverages to a person under 21 years of age. On August 4, 2004, Reaney's did provide an alcoholic beverage to Jason Ratney, who was then 20 years of age. Although he was carrying his brother's identification which indicated that he was at least 21 years of age, the bartender on duty at the time did not ask to see that identification, and Ratney did not show it to him.

5. Chapter 409.08 (15) of the City's Legislative Code requires a license to take "reasonable and adequate steps" to prevent persons from leaving the premises with an alcoholic beverage. Reaney's did violate this request on December 5, 2004, when Fernando Anderson stepped out of the bar carrying a can of beer observed the police activity for several seconds, and then returned to the bar.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the City Council take adverse action against the licenses held by M. Reaney, Inc. d/b/a Reaney's Bar.

Dated this 16th day of February 2005.

S/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

With respect to the first incident involving serving alcohol to an obviously intoxicated person, the evidence demonstrates that Crittenden had been at the bar for approximately four hours, and he admitted to drinking "several beers" during that period. Officers Dunasky and Reginek decided that he was too intoxicated to care for himself, and certainly too intoxicated to drive a motor vehicle, and so they took him to Detox. Although he only blew a .174 when tested at Detox, it is more likely than not that he was intoxicated when served his last beer at Reaney's. Therefore, the citation is upheld.

The second violation, relating to sale to a minor, is a matter of credibility. The police report provides a detailed description of Jason Ratney's conduct and his admissions that he had been drinking and that he knew it was illegal for him to have been drinking. Although the bartender on duty at the time claims that he did not serve Ratney, the Administrative Law Judge finds the evidence supporting the violation to be more credible.

The December 5 violation involving Fernando Anderson stepping outside with a can of beer in his hand, taking a sip, and then going back inside, is a situation where so

little time elapsed that a citation seems unduly harsh. Anderson stepped outside in order to see what the police were doing, and after spending less than 15 seconds, he went back inside. But the Code requires a licensee to take “reasonable and adequate steps” to prevent anyone from carrying an alcoholic beverage from the premises. There were 15 to 20 people in the bar, but only one bartender and no bouncers. Under those circumstances, Reaney’s did not take reasonable and adequate steps to prevent the occurrence.

A.W.K.

[\[1\]](#) Ex. 2.

[\[2\]](#) Ex. 6.

[\[3\]](#) Ex. 4.

[\[4\]](#) Ex. 5.

[\[5\]](#) Ex. 7.

[\[6\]](#) Ex. 8.