



STATE OF ARIZONA  
ARIZONA STATE LIQUOR BOARD  
800 WEST WASHINGTON, 5<sup>TH</sup> FLOOR  
PHOENIX, AZ 85007  
PHONE: (602) 542-9789 FAX: 602-542-5707  
Website:  
Website:

JANICE K. BREWER  
Governor

J. D. GHELFI  
Board Chair

ALAN EVERETT  
Director

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Arizona State Liquor Board Hearing Minutes  
August 1, 2013

Members Present: J.D. Ghelfi - Chair, Bill DuPont – Vice-Chair, Tim Linden, Vikki Scarafiotti, Jim Carruthers

Members Absent: Robin Cantrell

Counsel Present: Sarah Selzer, Assistant Attorney General  
Christopher Munns, Assistant Attorney General

Staff Present: Denise Bale, Board Administrator

**A. Call to Order**

The hearing of the Arizona State Liquor Board was called to order on August 1, 2013 at 9:00 a.m. with Mr. Ghelfi presiding.

**Roll Call**

Ms. Cantrell was absent. All other board members were present.

**B. Agenda: Review, Consideration and Action**

The Board heard item #2 first.

**1. Restaurant Liquor License No. 12079429 - Original Application**

Randy D. Nations, Agent  
Boston's The Gourmet Pizza  
400 W. University Drive  
Tempe, AZ 85281

This matter was set for hearing because the City of Tempe denied the application based on unpaid transaction privilege taxes owed to the City. There is an interim permit in place at this location. Subsequent to this matter being scheduled for hearing, Aaron Babcock, a Controlling Person in Boston's The Gourmet Pizza, filed a request for continuance on July 26, 2013. Assistant City Attorney David Park appeared on behalf of the City of Tempe and did not object to the continuance. David Trecek appeared on behalf of Boston's The Gourmet Pizza.

Motion to continue to  
September hearing -  
Seconded -  
Yay -  
Nay -  
Abstained -  
Disposition -

DuPont  
Linden  
Ghelfi, DuPont, Linden, Scarafiotti, Carruthers  
None  
None  
Matter continued to the September meeting

The Board proceeded to item #1.

**2. Bar Liquor License No. 06070388 - Appeal of Director's Decision & Order**

Jay K. Johari, Agent  
RJE LLC  
Vintage Bar & Grill  
414 S. Mill Avenue, Suite 215  
Tempe, AZ 85282

This matter was set for hearing because the Licensee requests that the Board reverse the Decision and Order of the Director of the Department of Liquor Licenses and Control ("Department"). The agent, Jay Johari, appeared at the hearing and was represented by counsel, Peter Schelstraete. Assistant Attorney General Sarah Selzer appeared on behalf of the Department. Assistant Attorney General Christopher Munns, from the Solicitor General's Office, was present and provided independent legal advice to the Board.

The Board may affirm, reverse or modify the Director's Decision and Order. The Director ordered the Findings, Conclusions and Recommendation of the Administrative Law Judge are adopted; the licensee is found in violation of A.R.S. § 4-210(A)(10); and Bar Liquor License No. 06070388 be suspended for four days. Mr. Schelstraete argued the plain language of A.R.S. § 4-210(A)(10) applies only to a customer of the licensee. Ms. Selzer argued the licensee has a responsibility for public safety in acts of violence immediately adjacent to the licensed premise. Board members asked about the chain of events and where the events occurred.

Mr. Linden made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	Linden
Seconded -	DuPont
Yay -	Ghelfi, DuPont, Linden, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 9:42 a.m. and reconvened in open session at 9:44 a.m.

Board discussion continued regarding the legal obligation of the licensee. Board members discussed how A.R.S. § 4-210(A)(10) is written and the challenge it presents in making a decision.

Mr. Ghelfi made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	Ghelfi
Seconded -	DuPont
Yay -	Ghelfi, DuPont, Linden, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 10:05 a.m. and reconvened in open session at 10:16 a.m.

Mr. Carruthers made the motion to affirm the Director's decision in its entirety as to finding and punishment.

Motion to affirm -	Carruthers
Seconded -	Scarafiotti
Yay -	Carruthers, Scarafiotti
Nay -	Ghelfi, DuPont, Linden
Abstained -	None
Disposition -	Motion fails

Board discussion continued regarding the interpretation of A.R.S. § 4-210(A)(10) and the facts before the Board. Mr. Ghelfi, Mr. Linden, Ms. Scarafiotti, Mr. Carruthers and Mr. DuPont discussed their positions.

Mr. Carruthers made the motion to affirm the Director's decision in its finding and to modify the punishment to a fine of \$750.00.

Motion to affirm and modify the punishment to \$750 -	Carruthers
Seconded -	DuPont
Yay -	Carruthers, DuPont
Nay -	Ghelfi, Scarafiotti, Linden
Abstained -	None
Disposition -	Motion fails

Board discussion continued regarding the appropriate punishment. Mr. Linden asked about the video entered into evidence. The Board discussed the meaning of "customer" in the statute. Mr. Carruthers made the motion to affirm the Director's decision, finding there was a violation of A.R.S. § 4-210(A)(10) and the punishment of four days suspension is appropriate.

Motion to affirm -	Carruthers
Seconded -	Scarafiotti
Yay -	Carruthers, Scarafiotti
Nay -	Ghelfi, DuPont, Linden
Abstained -	None
Disposition -	Motion fails

Board discussion continued regarding the appropriate punishment. Mr. Carruthers renewed his motion to affirm the Director's decision, finding there was a violation of A.R.S. § 4-210(A)(10), with an amendment to the punishment of two days suspension and a fine of \$1,500.00.

Motion to affirm and modify to two days suspension and a fine of \$1,500.00 -	Carruthers
Seconded -	Scarafiotti
Yay -	Carruthers, Scarafiotti, DuPont
Nay -	Ghelfi, Linden
Abstained -	None
Disposition -	Decision and Order of the Director is Modified

The Board proceeded to item #3.

**3. Beer and Wine Store Liquor License No. 10013017 - Original Application**

Clare Hollie Abel, Agent  
Dollar General Store #10201  
1180 W. Cleveland Street  
St. Johns, AZ 85936-0040

This matter was set for hearing because the City of St. Johns recommended disapproval of this application based on saturation of liquor licenses in the town. The Agent, Clare Hollie Abel, appeared at the hearing. Mike Mulhern appeared on behalf of the applicant and was sworn and testified. There was no representation from City of St. Johns at the hearing. Mr. Linden disclosed that he is a distributor in southeast Arizona. He sells alcoholic beverages and nonalcoholic beverages. He serves Graham, Greenlee, Cochise and southern Gila counties. Mr. Linden does not sell products in this area of Apache County. He has no financial interest in this area and feels that he can participate in the hearing and remain impartial. Some of his customers include Dollar General, but not this location. Ms. Abel had no objections to Mr. Linden's participation in the hearing.

Ms. Abel began by stating not all the merchandise sold in a Dollar General costs a dollar. Of the 11,000 locations in the nation, there are 80 stores in Arizona. Dollar General focuses on serving underserved areas where shopping choices are limited. Ms. Abel described Dollar General as an old fashioned general store, offering groceries and sundries. Ms. Abel discussed the saturation issue raised by the St. Johns City Council and noted that there were no public protestors in attendance at the City Council hearing on the Dollar General liquor license application.

Mike Mulhern, Regional Director of Operations for New Mexico, Arizona and West Texas Dollar General, described the training of associates with respect to alcohol sales. The point of sale system requires a valid ID from customers of any age. Employees must pass the training test by 100% before they are allowed to work on a cash register selling alcohol. The Board asked Mr. Mulhern about the merchandise sold in the store, the proximity of other establishments selling packaged liquor, the company's process for handling violations, and the manager of the store. As it relates to being capable, qualified and reliable, Mr. Ghelfi pointed out that the application materials submitted by the applicant were incomplete. Specifically, the list of violations was not included on each questionnaire.

Mr. DuPont made a motion to convene in executive session to receive legal advice.

Motion to convene in executive session for legal advice -	DuPont
Seconded -	Linden
Yay -	Ghelfi, DuPont, Linden, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 11:15 a.m. and reconvened in open session at 11:21 a.m.

Board questions continued. Mr. Ghelfi asked about the manager listed on the application and the actual manager of the store. Mr. Ghelfi discussed best practices with respect to complete applications, questionnaires, and having "on the ground" witnesses to testify about business practices. He raised the question about incomplete questionnaires and asked Ms. Abel to affirm that the violations listed and attached to the questionnaire signed by Mr. Robert Stephenson is incorporated in its entirety into all the other questionnaires submitted in this case. Ms. Abel addressed the questions related to the corporate application.

There was Board discussion. Mr. Ghelfi reiterated how the Board relies on the submission of information as it relates to their ability to determine if the applicant is capable, qualified and reliable. Mr. Linden discussed the concept of "convenience stores on steroids" and the perception of saturation in St. Johns. Ms. Scarafiotti commented about the presentation of the case and why it is important to the Board in finding of the facts. Mr. DuPont commented on the perception of dollar stores and how it has carried over to Dollar General stores. He also spoke about the convenience they offer.

Mr. DuPont made a motion as to Liquor License No. 10013017: The applicant has a training program in place, has provided its applications; testified to the application's attachments and past violations and answered the questions and concerns from the Board, I move the applicant is capable, qualified and reliable to hold a liquor license as required by A.R.S. § 4-203(A). Based on the location, this is in small town; there is at least one mile or more to the closest location offering the same amenities; this store also offers groceries and various sundry items; the public convenience does require and the best interest of the community will be served by as required by A.R.S. § 4-203(A) by granting the liquor license; and that there were not any public protestors.

Motion to grant license -	DuPont
Seconded -	Carruthers
Yay -	Ghelfi, DuPont, Linden, Scarafiotti, Carruthers
Nay -	None
Abstained -	None
Disposition -	License granted

**C. Minutes**

Motion to approve the  
August 20, 2012 minutes - DuPont  
Seconded - Ghelfi  
Yay - Ghelfi, DuPont  
Nay - None  
Abstained - Carruthers, Linden, Scarafiotti  
Disposition - August 20, 2012 minutes approved

Motion to approve the  
May 2, 2013 minutes - DuPont  
Seconded - Carruthers  
Yay - Ghelfi, DuPont, Linden, Scarafiotti, Carruthers  
Nay - None  
Abstained - None  
Disposition - May 2, 2012 minutes approved

Motion to approve the May 2, 2013  
Executive Session minutes - Linden  
Seconded - Scarafiotti  
Yay - Ghelfi, DuPont, Linden, Scarafiotti, Carruthers  
Nay - None  
Abstained - None  
Disposition - May 2, 2013 Executive Session minutes approved

Motion to approve the  
June 6, 2013 minutes - Carruthers  
Seconded - Scarafiotti  
Yay - Ghelfi, DuPont, Linden, Scarafiotti, Carruthers  
Nay - None  
Abstained - None  
Disposition - June 6, 2013 minutes approved

Motion to approve the June 6, 2013  
Executive Session minutes - DuPont  
Seconded - Scarafiotti  
Yay - Ghelfi, DuPont, Linden, Scarafiotti, Carruthers  
Nay - None  
Abstained - None  
Disposition - June 6, 2013 Executive Session minutes approved

**D. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda**

Mr. Ghelfi announced the September Board meeting will be held during the second week on September 12, 2013.

**E. Review of Proposed Time Allotment**

Assistant Attorney General Sarah Selzer facilitated a discussion about time allotment in Board hearings. The Board discussed due process, unrepresented applicants, use of time limits, the Chair's role, and briefing in order to eliminate redundancy. Mr. Ghelfi requested the Board review time limits of hearings as an agenda item for September.

**F. Discussion of Other States' Actions Related to Liquor License Procedure**

At Mr. DuPont's confirmation hearing, Senator Al Melvin suggested the Board compare Arizona's liquor licensing laws with other states. The Senator's office has not responded to staff requests for additional information. The Board will defer to the Department for all legislative matters.

**G. Discussion of Proposed Legislation for 2014**

The Board received information from the Department about proposed legislation for 2014.

**H. Call to the Public**

Clare Hollie Abel, Agent for Wal-Mart Supercenter #3884, addressed the Board about a finding of fact in the Board Order No. B-021-13 indicating increased crime associated with Wal-Mart. Mr. Ghelfi stated the Board has been made aware of that issue and asked Ms. Abel to coordinate with the Board Administrator in effectuating the requested change in the order.

The Board adjourned at 12:20 p.m.



Denise M. Bale  
Administrator of the  
Arizona State Liquor Board



Date