

**A CONTESTED MATTER BEFORE THE DIRECTOR  
OF THE IDAHO STATE POLICE**

ROBERT SCHOT, and	)	
SPRAG POLE MUSEUM, INC., an Idaho	)	
corporation,	)	<b>CASE NO. 2018-ABC-1</b>
	)	
Petitioners,	)	<b>FINAL ORDER</b>
	)	
vs.	)	
	)	
IDAHO STATE POLICE,	)	
ALCOHOL BEVERAGE CONTROL,	)	
	)	
Respondent.	)	

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This matter is before Colonel Kedrick R. Wills, Director of the Idaho State Police, acting as presiding officer in the above-captioned matter, pursuant to the Amended Petition filed by Petitioners Robert Schot ("Schot") and the Sprag Pole Museum, Inc. ("Sprag Pole") appealing the denial of an Alcohol Beverage License by Respondent Idaho State Police, Alcohol Beverage Control ("ABC") on July 6, 2018. For the reasons stated below, the Amended Petition is GRANTED to the extent that ABC is directed to issue a "continuous operation" liquor license to Petitioners pursuant to Idaho Code § 23-903(8) upon the filing of an application by Petitioners otherwise satisfying the requirements for such a license.

Factual/Procedural Background

The Sprag Pole Bar and Museum is located at 6353 Prichard Creek Street in Murray, Idaho. Built in 1884, Walter Almquist purchased the building in 1933. Almquist and his wife ran a restaurant in the building for nearly forty years before opening a museum. In 1982, Sprag Pole, a non-profit company, took over the building and the museum and continues to own them through the present day. ABC granted the Sprag Pole a "continuous operation" liquor license under Idaho

Code § 23-903(8) that expired in 2015 and, subsequently, renewal licenses that expired in 2016 and 2017. ABC has not disputed the qualifications of the Sprag Pole for a “continuous operation” liquor license prior to October 2017. Additionally, ABC does not challenge that the Sprag Pole has been in operation from March 2018 through the present. Rather, the factual dispute underlying this matter is limited to the period of October 2017 through March 2018.

The evidence in this matter is unchallenged that on October 5, 2017, an inspector with the Panhandle Health District performed a food establishment inspection at the Sprag Pole. The inspector informed the new lessee of the premises, Schot, that the kitchen of the Sprag Pole had to be renovated before the district would issue a new food permit-license. Schot subsequently began making minor renovations to the building in late October 2017, with the bulk of the required renovations beginning in January 2018 and concluding in March 2018. Schot thereafter obtained a food-permit license in his name for the Sprag Pole on March 21, 2018.

Petitioners assert that this closure was due to the need to refurbish and remodel the establishment and constitutes a temporary closure for renovations within the statutory exception to the “continuous operation” requirement of Idaho Code § 23-903(8). ABC, to the contrary, contends that the closure of the Sprag Pole resulted, at least in part, from the winter season. Peggy Wells, the president of the Sprag Pole board of directors who ran the restaurant during part of 2017, stated to an ABC detective that she told the health inspector that they would do the renovations during the winter when they would be closed anyway. An ABC detective visited the Sprag Pole on November 28, 2017, and observed that the location was closed with no one inside and a sign had been posted declaring “Closed for the season[.] Open in the spring[.] Have a great winter[.]”

Prior to its expiration, the holder of the liquor license for the Sprag Pole, Alberico Ciccone, attempted to sign the license over to another person, but the transfer did not take place and the license expired on November 30, 2017. Schot thereafter applied for a new liquor license with ABC on June 19, 2018.

On June 21, 2018, Schot's liquor license application was returned by ABC with instructions to resubmit the application with additional materials, including documentation evidencing the Sprag Pole's continuous operation.

On June 27, 2018, Schot again submitted a liquor license application to ABC. On July 6, 2018, Schot received another ABC Applicant Return Record letter notifying him that the application and accompanying materials were being returned and stating:

The application and supporting documents submitted for a specialty liquor license 75-year, continuous operation is insufficient as we are aware of the closure of the business not related to refurbishment/remodeling of the food, beverage and/or lodging facility after the last licensee of record, Alberico Ciccone in 2016/2017.

Petitioners first filed a Petition on July 20, 2018, with the Director of the Idaho State Police and ABC and, thereafter, a subsequent Amended Petition on July 26, 2018, requesting the initiation of a contested case hearing.

The Amended Petition seeks the following:

- (1) The initiation of a contested case hearing to determine the legal authority for the Idaho State Police's Alcohol Beverage Control Bureau to:
  - (a) Deny Petitioner's Liquor License Application without any reasonable explanation as to the denial;
  - (b) Require Petitioner to submit continuous operation documentation without providing legal support for such request; and
  - (c) Harass, disparage and impugn Petitioner.
- (2) Identify the rule, regulation, statute, guideline, directive or other authority constituting a definition of "continuous operation" pursuant to Idaho Code § 23-903 (8);
- (3) Identify the underlying facts, data, information or evidence, if any, upon which Respondent has relied, or is relying, in determining or concluding that Petitioner is not entitled to a liquor license pursuant to Idaho Code § 23-903 (8); and
- (4) An order directing the Idaho State Police Alcohol Beverage Control Bureau to cease and desist its interference with the Petitioner's lawful right to a fair and uniform liquor license application review and issuance of a liquor license in accordance with what the Petitioner has historically held.

The instant matter is the contested case hearing process sought by Petitioners. ABC provided the agency record on September 28, 2018. The parties each subsequently provided additional documents along with their briefs and, on January 7, 2019, each party filed an unopposed motion to supplement the record. On that same date, the parties submitted an evidentiary stipulation. On January 11, 2019, the Director issued an order augmenting the agency record with the submissions made by the parties. On January 24, 2019, the parties offered testimonial evidence to further supplement the record and presented oral arguments before the Director.

#### Discussion

Title 23, Idaho Code vests the Director of the Idaho State Police with the authority to grant licenses to qualified persons to sell liquor by the drink and to promulgate rules regarding such sales. Idaho Code § 23-901. Idaho Code § 23-903(1) specifies that “[t]he director of the Idaho state police is hereby empowered, authorized, and directed to issue licenses to qualified applicants . . . whereby the licensee shall be authorized and permitted to sell liquor by the drink at retail.”

The pivotal question in this matter is whether Sprag Pole and Schot maintained “continuous operation” for the period of October 2017 through March 2018 for the purposes of preserving the establishment’s eligibility for a specialty liquor license under Idaho Code § 23-903(8). Idaho Code § 23-903(8) states, in relevant part, “[n]othing in this chapter shall prohibit the issuance of a license to the owner, operator or lessee of a food, beverage and/or lodging facility that has been in continuous operation in the same location for at least seventy-five (75) years, except for temporary closings for refurbishing or reconstruction. . . .”

The parties disagree as to what constitutes “continuous operation” under this statute. Sprag Pole contends that the relevant statutes, rules, and regulations fail to define “continuous operation” and that ABC has failed to provide appropriate guidance. Sprag Pole argues that the plain language of the term governs and that there is no authority to support ABC’s position that Sprag Pole has not satisfied the “continuous operation” requirement. To the contrary, ABC submits that its

interpretation of the term should be given deference as ABC is expressly charged and authorized by law to administer Idaho Code § 23-903(8). Yet, resolution of this dispute as to the precise meaning of "continuous operation" is not necessary to the determination of this matter.

The record before the Director establishes that on October 5, 2017, an inspector with the Panhandle Health District performed a food establishment inspection at the Sprag Pole and prepared a report. The report indicates that the inspector found the kitchen of the Sprag Pole to be in violation of the health code and specified that "uncleanable" surfaces "must be replaced" and that there could be "NO food prep until replaced." The Sprag Pole thereafter closed and underwent renovations. These renovations began in October 2017 and continued through March 2018. On December 1, 2017, Schot purchased equipment for the Sprag Pole as part of these renovations, including sinks, a faucet, a dishwasher, and dish tables. On March 21, 2018, the Panhandle Health District issued a food permit-license to the Sprag Pole and Schot. Thereafter, on March 29, 2018, the inspector again visited the Sprag Pole to perform a "preopening" inspection. The inspector found no violations and noted that there had been a "Huge transformation!!!" and that there were "all new sinks, dishwasher, [and] lots of great improvements" in the kitchen.

Accordingly, the Director finds that the closure of the Sprag Pole from October 2017 through March 2018 was a temporary closing for refurbishing or reconstruction, as contemplated in Idaho Code § 23-903(8), and was reasonable in its duration given the nature of the renovations performed. Therefore, as there has been no evidence presented that the Sprag Pole's operation was interrupted during any other time period from 1933 through the present day, the Director finds that the Sprag Pole has satisfied the requirement of Idaho Code § 23-903(8) that the establishment "has been in continuous operation in the same location for at least seventy-five (75) years."

In the record, there is some evidence that the Sprag Pole's board of directors and Schot had previously contemplated closing the establishment during the winter of 2017-18, including discussions with ABC detectives about the

permissibility of such a closure and providing for what would take place in the event of a closure in the lease agreement with Schot. Yet, such intentions are not controlling where, as is evident here, the need for renovations occasioned the actual closure. Nor is the sign displayed to the public asserting that the Sprag Pole's closure was due to the winter season conclusive. That the Sprag Pole chose to represent to the public that the closure was seasonal, rather than the more unsavory option of declaring that it was closed by the health district due to health code violations, is of no import under the statute. The statute is concerned with whether the temporary closing is for refurbishing or reconstruction, not with the manner or accuracy of how the establishment chooses to represent that closure to the public. As the temporary closing of the Sprag Pole was indeed due to refurbishing, the Sprag Pole has satisfied the "continuous operation" requirement of Idaho Code § 23-903(8) and is eligible for the issuance of a license under that statutory section, and chapter 9, title 23, of Idaho Code more broadly, to its owner, operator, or lessee.

The record before the Director, however, is unclear whether Petitioners satisfy the other requirements for the issuance of a license. ABC denied Petitioners' application on the basis of a failure to establish continuous operation and returned the application to Petitioners; therefore, ABC did not review the application to determine whether it satisfied the other requirements for a liquor license. Although the Director has now determined that the "continuous operation" requirement has been satisfied, ABC must still evaluate whether these other requirements have been met. Accordingly, the Amended Petition is GRANTED to the extent that ABC is directed to issue a "continuous operation" liquor license to Petitioners pursuant to Idaho Code § 23-903(8) upon the filing of an application by Petitioners otherwise satisfying the requirements for such a license.

DATED this 16th day of March, 2019.



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Colonel Kedrick R. Wills  
Director, Idaho State Police

### Notice of Final Order

This is a final order of the agency, issued by the agency head pursuant to Idaho Code § 67-5246 and IDAPA 04.11.01.740.01. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on this 18<sup>th</sup> day of March, 2019, I caused to be served a true and correct copy of the foregoing Final Order to:

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Gregory B. LeDonne  
Deputy Attorney General