

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



IDAHO STATE POLICE, )  
ALCOHOL BEVERAGE CONTROL, )  
 )  
Complainant, )  
 )  
vs )  
 )  
MICHAEL TIBBETTS, dba MT SADDLE )  
SALOON, )  
 )  
Respondent. )

Case No. 15ABC-007  
License No. 3589  
Premise No. 2L-39  
  
HEARING OFFICER'S  
PRELIMINARY ORDER

Date of Decision: October 5, 2015  
Hearing Officer: Kipp L. Manwaring  
Complainant: Idaho State Police, Bureau of Alcohol Beverage Control (Agency)  
Respondent: Michael Tibbetts

**INTRODUCTION AND PROCEDURAL HISTORY**

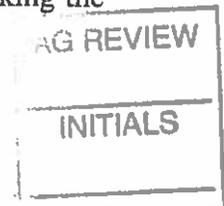
In accordance with IDAPA 04.11.01.154.01, the hearing officer was duly appointed and authorized by the Idaho State Police, Bureau of Alcohol Beverage Control to conduct hearing of this matter and issue a preliminary order.

Complainant filed a complaint to revoke Respondent's license to sell and serve beer where Respondent received or kept liquor on his premises without a liquor license. Respondent answered by denying the material allegations of the complaint.

Hearing was held August 3, 2015 and a supplemental hearing was held August 31, 2015. Following the supplemental hearing, the parties submitted their proposed findings and conclusions.

**ISSUE**

Is keeping or receiving another's liquor, or allowing such liquor to be consumed, in premises licensed only for retail selling and serving of beer grounds for revoking the license?



## FINDINGS OF FACT

The following facts are taken from testimony and documentary evidence presented at the hearing and supplemental hearing.

1. Michael Tibbetts owns the M-T Saddle Saloon (the Licensed Premises). The Licensed Premises is located at 3431 Salmon River Road in a remote area along the Salmon River near Shoup, Lemhi County, Idaho.
2. Adjacent to the Licensed Premises is an area of land Tibbetts owns and has developed for his interest in creating a small rustic western town setting together with a travel trailer park where recreationists may rent space to camp.
3. Effective September 1, 2014 the Idaho State Police Bureau of Alcohol Beverage Control issued License Number 3589 (License) to Tibbetts authorizing him to sell beer for consumption on the Licensed Premises.
4. Tibbetts did not have a license to keep, sell, or dispense liquor on the Licensed Premises.
5. For several years Tibbetts followed what he believed was the hospitable practice of allowing patrons from the travel trailer park to bring or keep their liquor in the Licensed Premises and consume the liquor on the Licensed Premises when the saloon was otherwise closed to the public.
6. Tibbetts believed his practice was an allowable exception to the alcohol licensing laws in the state of Idaho.
7. Tibbetts testified that his belief arose from a discussion he had with an unknown agent of the Agency who many years ago reportedly told Tibbetts that keeping and consuming liquor in the Licensed Premises was permissible if the saloon was closed to the public.
8. On September 3, 2014 Detective Chad Goody of the Idaho State Police conducted an inspection of the Licensed Premises.
9. A dispute of fact exists regarding whether Tibbetts told Goody there was no liquor in the Licensed Premises; however, such dispute is immaterial where Tibbetts testified liquor was received or kept in the Licensed Premises.
10. In a small room designated as a kitchen adjoining the main bar in the Licensed Premises Goody discovered thirteen bottles of liquor situated on a counter near

a sink. Twelve of the bottles were clearly marked with manufacturer's labels describing the contents as liquor. Three of the bottles of liquor were full. All the remaining bottles of liquor on the counter contained some quantity of liquor. Some of the bottles of liquor on the counter had pour spouts affixed.

11. In a garbage can next to the counter and sink where the bottles of liquor were found, Goody observed four empty bottles clearly marked with manufacturer's labels describing the bottles as being liquor bottles.

12. Goody photographed the bottles of liquor in the locations where he found them and seized them for evidence.

13. The kitchen adjoining the main bar room was part of the depiction of the Licensed Premises Tibbetts submitted to the Idaho State Police as part of his license application.

14. Tibbetts admitted the kitchen was part of the Licensed Premises.

15. Tibbetts explained to Goody, and testified himself, that the bottles of liquor were owned by patrons of the trailer park and he allowed them to bring the liquor into the Licensed Premises where it was kept and used for consumption.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### ***Applicable Administrative Code and Statutes***

Idaho Code § 23-934 states, "It shall be unlawful for any person to keep or maintain any rooms or premises in which liquor is received or kept, whether owned by such person or by another, or to which liquor is brought, for consumption on the premises by members of the public or of any club, incorporated or unincorporated, or a corporation or association, unless such person and the premises are licensed under this act, except as provided under a liquor catering permit."

Under Idaho Code § 23-933, the director may "suspend, revoke, or refuse to renew a license issued pursuant to the terms of this chapter for any violation of or failure to comply with the provisions of this chapter or rules and regulations promulgated by the director...."

### ***Burden of Proof***

Complainant has the burden of proving by a preponderance of the evidence that Respondent violated the act. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

### ***Analysis***

Complainant has shown by a preponderance of the evidence that Tibbetts received and kept liquor in the Licensed Premises. Complainant has shown by a preponderance of the evidence that Tibbetts' license to sell beer does not grant Tibbetts license to receive or keep liquor on the Licensed Premises.

Under the statute cited above, a violation of the act is grounds for revocation of the License. See *BV Beverage Co., LLC v. State*, 155 Idaho 624, 315 P.3d 812 (2013).

Respondent argued that Complainant did not present evidence showing liquor was being sold to patrons of the Licensed Premises. Respondent further argued that Complainant's evidence was circumstantial at best but not factual evidence.

Respondent's arguments are without merit. Complainant was not required to present evidence proving Respondent sold liquor in the Licensed Premises. Complainant's evidence, and Respondent's own testimony, established conclusively that Respondent received or kept liquor in the Licensed Premises.

Respondent contended at trial that his reliance on an unknown agent's purported statement authorizing use of the Licensed Premises for receiving or keeping liquor after hours constituted reasonable excuse for his erroneous understanding of law. Respondent cited no authority for his position.

"Ignorance of the law is not a defense." *State v. Fox*, 124 Idaho 924, 866 P.2d 181 (1993). Nor is mistake of law a defense. See *State v. Goggin*, \_\_\_ Idaho \_\_\_, 333 P.3d 112 (2014). Respondent presents no cogent rationale for disregarding the preceding well-settled principles of jurisprudence.

Respondent's argument is further deemed to raise the issue of equitable estoppel. However, equitable estoppel cannot be applied against Complainant. Idaho has long followed the rule that estoppel may not be invoked against a government agency functioning in a governmental capacity. *State ex rel. Williams v. Adams*, 90 Idaho 195, 201-202, 409 P.2d 415, 419 (1965). Since the decision in *Williams*, Idaho's appellate

courts have consistently declined to apply estoppel against a governmental agency acting in its governmental capacity. *Young Electric Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 810, 25 P.3d 117, 123 (2001); *Naranjo v. Idaho Dept. of Correction*, 151 Idaho 916, 919, 265 P.3d 529, 532 (Ct. App. 2011).

## **CONCLUSION**

Complainant has established that Respondent violated I.C. § 23-934 where Respondent received or kept liquor on the Licensed Premises without a liquor license.

Respondent's arguments fail as a matter of law. It is recognized that Respondent's a situation is one where well-meaning albeit misplaced hospitality ran afoul of the law.

## **ORDER**

It is recommended that Respondent's License be revoked for violation of I.C. § 23-934.

This is a preliminary order of the hearing officer. It can and will become final without further action of the Agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the Agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order 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.

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Agency head (or designee of the Agency head). Otherwise, this preliminary order will become a final order of the Agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Agency.

Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Agency head (or designee). The Agency head (or designee) may review the preliminary order on its own motion.

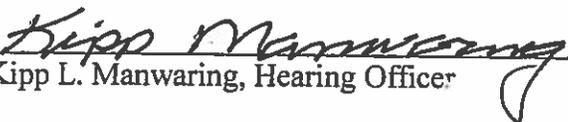
If the Agency head (or designee) grants a petition to review the preliminary order, the Agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The Agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

In accordance with I.C. §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order may appeal the 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.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Dated this 5<sup>th</sup> day of October 2015.

  
Kipp L. Manwaring, Hearing Officer

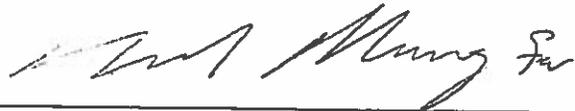
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5<sup>th</sup> day of October 2015, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: HEARING OFFICER'S PRELIMINARY ORDER

PARTIES SERVED: Kenneth M. Robins  
Deputy Attorney General  
700 S Stratford Drive  
Meridian, Idaho 83642  
**MAILED**

Michael Tibbetts  
Mt. Saddle Saloon  
3431 Salmon River Road  
Shoup, Idaho 83469  
**MAILED**



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Alicia Lambert  
Legal Assistant