

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Sabu, Inc.)	
Joseph Sabath, President)	
Applicant (COP-IA))	
for the premises located at)	Case No. 08 LA 43
3281 West Armitage Avenue)	
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Mary Lou Eisenhauer, Acting Director)	
)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER KOPPEL

Sabu, Inc. applied for a Consumption on Premises - Incidental Activity license for 3281 West Armitage Avenue. On July 11, 2008, Mary Lou Eisenhauer, Acting Director of the Local Liquor Control Commission, denied the application on the basis that this location is located within 100 feet of the Iglesia De Cristo Misionera church. The Illinois Liquor Control Act prohibits the issuance of new licenses within 100 feet of a church (235 ILCS 5/6-11). A timely notice of appeal was filed with this Commission. The matter proceeded to a de novo hearing before this Commission on October 2 and November 6, 2008.

On October 2, 2008, the parties through their respective counsel entered into stipulation of facts. Those stipulations included the following:

1. Sabu, Inc. currently has a retail food establishment license and has applied

for a Consumption on Premises - Incidental Activity liquor license for the premises located at 3281 W. Armitage Avenue.

2. Sabu is a completely new owner of the establishment at 3281 W. Armitage Avenue.
3. The immediately prior owner or operator of the premises at 3281 W. Armitage Avenue operated the premises as a restaurant and held a valid retail license authorizing the sale of alcoholic liquor at the premises for at least part of the 24 months before the change of ownership.
4. Sabu's premises is located 75 or more feet from a school.
5. Iglesia De Cristo Misionera, a church, is located at 1942 N. Spaulding.
6. The distance from Sabu's property line to the nearest part of Iglesia De Cristo Misionera used for worship services or educational programs is 78 feet.

With this stipulation there are no material facts in dispute. The issue before this Commission is whether under the stipulated facts, the provisions of the Illinois Liquor Control Act bar the issuance of this license since the establishment is within 100 feet of a church. 235 ILCS 5/6-11 (a) bars the issuance of a license for the sale at retail of any alcoholic liquor within 100 feet of any church, school other than an institution for higher learning, hospital, home for aged or indigent persons or for veterans, their spouses or children or any military or naval station. These general prohibitions have been amended by statutory exceptions set out in paragraphs a through l of Section 235 5/6-11.

One of these statutory exceptions is set out in paragraph (c) which specifically states:

Nothing in this Section shall prohibit the issuance of a retail license authorizing the sale of alcoholic liquor incidental to a restaurant if (1) the primary business of the restaurant consists of the sale of food where the sale of liquor is incidental to the sale of food and the applicant is a completely new owner of this restaurant, (2) the immediately

prior owner or operator of the premises where the restaurant is located operated the premises as a restaurant and held a valid retail license authorizing the sale of alcoholic liquor at the restaurant for at least part of the 24 months before the change of ownership, and (3) the restaurant is located 75 or more feet from a school.

It is the applicant's position that the stipulation of facts establish that it fits within each of the requirements for the exception to the 100 foot rule from a church applies. The City disagreed and filed a Motion to Dismiss the appeal. The applicant filed a reply and the City a response to the reply.

This Commission is established by the Illinois legislative and it empowers the Commission with the power to rule on appeals of a denial of an application for a license after a de novo hearing. While dismissal based on a motion may be appropriate in procedural matters such as a late filing of an appeal, this Commission feels that substantive matters must be determined on the merits not on motion. Since there are no facts in dispute, this case can be resolved substantively on the stipulation between the parties after reviewing the arguments of counsel set out in their briefs and at oral argument.

Counsel for the applicant argues that the phrase "Nothing in this Section" as used in 235 ILCS 5/6-11 (c) is clear and unambiguous and means just that. Since the licensee fit the requirements set out in the exception as shown by the stipulation, the license must issue. Counsel for the City asserts that this exception is not clear and unambiguous because the basis for the denial in this case deals with the applicant being within 100 feet of a church. The argument on whether this statutory exception is ambiguous is important because if it is not

ambiguous there would be no need to look at legislative intent. If ambiguous, one may look at the legislative intent. The fact is that this Commissioner feels it is the purpose of this Commission to attempt to ascertain the intent of the legislative in passing this legislation. After a close reading of the statute this Commissioner finds there is an ambiguity as to the exception in paragraph c. When the term "Nothing in this Section" is used does it refer to nothing in this section dealing with the 100 foot rule on schools or does it abolish the entire 100 foot rule. This ambiguity is such that one should look at the legislative intent.

The legislative intent is best found from a review of the transcript of the legislative proceedings. These proceedings are public record and it is appropriate for this Commission to review the transcripts. The review shows this legislation was to address a special exception to a law that was described as barring a restaurant serving alcohol within a thousand yards of a school. This Commissioner acknowledges this distance from a school is incorrect. The distance is 100 feet from a school. Through an attorney's error, the license was allowed to lapse. These transcripts show this exception was meant to deal with the 100 foot requirement from a school and was not designed to set up a blanket exception from the 100 foot rule for listed establishments.

Counsel for the applicant in his written brief argued the concept of special legislation. He did not address that issue at the hearing. For judicial economy, this Commissioner will address that issue and finds that this legislation is not the type of special legislation that would be unconstitutional.

Sabu, Inc. is located within 100 feet of the Iglesia De Cristo Misionera, a church, located at 1942 North Spaulding. The exception listed in 235 ILCS 5/6-11 (c) is not applicable to the facts of this case.

The decision of the Local Liquor Control Commissioner denying the Consumption on Premises - Incidental Activity liquor license for Sabu, Inc. at 3281 W. Armitage Avenue is upheld.

THEREFORE, IT IS HEREBY ORDERED That the said order or action of the Local

Liquor Control Commissioner of the City of Chicago be and the same hereby is AFFIRMED.

Pursuant to Section 154 of the Illinois Liquor Control Act, a petition for rehearing may be filed with this Commission within TWENTY (20) days after service of this order. The date of the mailing of this order is deemed to be the date of service. If any party wishes to pursue an administrative review action in the Circuit Court, the petition for rehearing must be filed with this Commission within TWENTY (20) days after service of this order as such petition is a jurisdictional prerequisite to the administrative review.

Dated: December 9, 2008

Dennis M. Fleming
Chairman

Irving J. Koppel
Member