

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant:	The Commissioner of Police (represented by Mr Symon Bagley Prosecutor, Licensing Enforcement Division)
Respondent:	Goldfields Hotels Pty Ltd t/as "The Exchange Hotel" (represented by Mr Ian Curlewis of Lavan Legal)
Premises:	"The Exchange Hotel" 135 Hannan Street KALGOORLIE WA 6430
Commission:	J.M. Freemantle (Chairperson) H Cogan & D Warnock (Members)
Observer:	Mr A Parekh
Matter:	Complaint under section 95(4)(fa) of the <i>Liquor Control Act 1988</i>
Date of Hearing:	5 September 2008
Date of Determination:	19 September 2008

Legislation	<i>Liquor Control Act 1988</i> ("the Act"), sections 95 and 96(1).
Result:	Monetary Penalty of \$4,000 to be paid by the Respondent to the Liquor Commission of Western Australia. Respondent to pay costs to the Liquor Commission of Western Australia of \$2,000.

Authorities referred to –

- Re The Flying Scotsman; Director of Liquor Licensing –v- Quelsen Pty Ltd [2003] WALLC 13
- Director of Liquor Licensing –v- West Valley 2000 Pty Ltd – Coco's Restaurant LLC8 of 2001 (Transcript of Proceedings)
- Re Paramount Nightclub; Director of Liquor Licensing –v- Explorer Cruise Lines Pt Ltd [2006] WALLC3

Background

The Complaints made by Geoffrey Michael Maloney, Superintendent Licensing Division of Western Australian Police on behalf of the Commissioner of Police of the State of Western Australia allege that proper cause for disciplinary action exists against the Respondent on the following grounds -

1. Having been given four (4) liquor infringement notices, numbers 143165, 143166, 215503 and 215504 respectively, under section 167 of the *Liquor Control Act 1988* and the respective modified penalties having been paid in accordance with that section.
2. Liquor infringement notice numbers 143165 and 143166 were issued to the licensee for permitting juveniles to enter or remain on the premises; and
3. Liquor infringement notice number 215503 was issued to the licensee for carrying on the business in a way that contravened a condition of the licence, namely, failing to provide a full meals service during the hours of trade.
4. Liquor infringement notice number 215504 was issued to the licensee for failing to keep a copy of plans approved by the licensing authority on the premises.

Hearing

1. Mr Bagley for the Complainant tendered a written submission to the Commission and made oral submissions at the hearing including that the Commission should impose a monetary penalty of \$10,000 (the maximum penalty being \$30,000) under section 96(m) of the Act, on the basis that it is necessary to send a strong message to licensees in the state that breaches of the Act will be dealt with strongly and the operation of a licensed premises must be conducted responsibly in keeping with the objects of the Act including the minimisation of harm.
2. Mr Bagley also submitted that in relation to liquor infringement notices 141365 and 143166, there was no evidence that alcohol had been consumed by the juveniles in question.
3. Mr Curlewis for the Respondent also tendered a written submission to the Commission and made oral submissions at the hearing and stated that he wished to clarify or expand certain matters, in particular those relating to the fact that there has been a reduction in trading hours and from 1 October 2008 (under a new licensee) the license for the premises will no longer have a condition relating to provision of a meal service such as that which existed at the time of the issue of the liquor infringement notice no 215503.
4. Mr Curlewis submitted that the relevant plans which are the subject of liquor infringement notice 215504 were on the premises at the relevant time but in an office where they could not be accessed by staff on duty.
5. Mr Curlewis submitted that it would be appropriate for the Commission not to impose a monetary penalty but to issue a reprimand.

Reasons

1. Having considered carefully the written and oral submissions made by Mr Bagley and Mr Curlewis and Mr Parekh's oral submissions at the hearing, the Commission is satisfied that proper cause for disciplinary action exists.
2. The Commission has in particular placed weight on Mr Bagley's submissions covering the seriousness of any failure by a licensee to abide by the provisions of the Act.
3. The Commission has also in particular placed weight on Mr Curlewis' submissions that ~~the licensee did not in any way seek to trivialise any of the matters which are the subject of the liquor infringement notices but the offences might be regarded as at the lower end of the scale in terms of seriousness of the offences.~~
4. The Commission notes the fact that the licensee of the premises at the relevant times is no longer the licensee of the premises.

Orders

1. In all the circumstances, the Commission is of the view that a monetary penalty is appropriate and accordingly orders the Respondent to pay the amount of \$4,000 to the Liquor Commission of Western Australia.
2. The Respondent is also ordered to pay costs in the sum of \$2,000 to the Liquor Commission of Western Australia.



Mr J Freemantle, Chairperson