

TAPED

The License Commission held a special meeting at 11:00 a.m. on Friday, December 31, 2010 in the G.A.R. Room at City Hall. Present were Commissioners Joseph P. Kelley, Joshua J. Wood and Alternate Fred Fontaine. Also present were Asst. City Solicitor Gil Schipani and Administrative Assistant Bonnie Tucker. Commissioner Kelley presided.

1. Approval of the following police officers as license agents for the month of January, 2011: Capt. Emanuel Gomes; Lieuts. Thomas LaFratta and Paul Bonanca; Sgts Frank Vardaro and Kenneth Lofstrom; Dets. Michael Schaaf, John Lonergan, James Smith and Ernest Bell; and Officer Scott Uhlman.

A motion was made by Commissioner Wood to approve the police officers as listed for the month of January, 2011. The motion was seconded by Commissioner Fontaine and made unanimous by vote of Commissioner Kelley.

2. Communications
3. Any other business to properly come before the Commission.

Attorney John Creedon, 71 Legion Parkway, came forward and stated he was present on two matters. He stated he is withdrawing The Pub matter. The Adm. Asst. indicated she is unsure what is being withdrawn as no application has been made. He indicated he was going to try to put The Pub forward but as of this morning, the family has made a decision to close the business. He stated they are involved in a tricky finance situation which will take out their building, however, this has not come to fruition as yet. He stated they felt it was not in their best interest to renew their license and he is formally notifying the Commission that the liquor license of The Pub is terminated as of December 31st at midnight.

Attorney Creedon stated the second matter pertains to Jeano's Restaurant at 769 Main Street and he introduced Dieulifaite Jean, the husband of the owner and the holder of the license, Berlange Jean.

Attorney Creedon reviewed the new regulation which went into affect this year and requires liquor liability insurance for renewal of licenses. He stated in this case, the licensee is Berlange Jean as an individual who does business as Jeano's Restaurant. Instead of having the liquor liability insurance issued in the licensee's name which is an individual, it was issued to the corporation, Jeano's Restaurant, Inc. Attorney Creedon stated that a Certificate of Insurance issued on December 8th, contained both Berlange Jean and Jeano's Restaurant, Inc. as the insured. He suggested that inasmuch as this is a new law, there is bound to be some administrative situations. Attorney Creedon stated that Mr. Jean has operated the business in his wife's name for the past 26 years. There have been no violations or problems whatsoever and it is a family business. Attorney Creedon stated that he is suggesting the intent of the statute is to require the licensee to have liquor liability insurance in order to protect the public. He stated it is his legal opinion, without question, that this policy is issued for 2011 and clearly covers any member of the public because the licensee is Berlange Jean even though they are doing business as something else. He indicated that the mistake was made by Mr. Jean and as Mr. Jean's

lawyer, he will come back before the board to put the license in as a corporation. He stated he called the Secretary of State who indicated it is clearly the intent of the statute to protect the public. Attorney Creedon explained that the statute is a result of the Rhode Island Night Club fire so there is a fund to protect someone who is injured personally or even a death to be covered. He stated it is clearly his legal opinion that, for sure, Berlangue Jean is covered and she is the licensee and if anyone gets injured or dies, the policy is for \$2 million per accident. Attorney Creedon then stated he would respectfully request the board to issue the renewal of this license held by Berlangue Jean dba Jeano's Restaurant.

Councillor-at Large Thomas Brophy stated he agrees with Attorney Creedon's description of the intent of the law and that as a former insurance defense attorney, as long as the policy indicates that Berlangue is on the policy, it is simply a matter of coverage and in his opinion it would be covered so essentially, any claim brought against the individual doing business as would be covered. He indicated the idea is that the public is protected and the policy holder would have coverage through the insurance company for any claim.

Attorney Creedon stated he will put this before the board within the next month or two. He stated they are incorporated and this happened after the original license was issued.

Councillor Brophy stated that earlier this month the City Council had to deal with setting tax rates and it is tough financial times. He stated this is a Main Street business which is very popular and it would be a detriment if they had to close.

Commissioner Kelley asked for Asst. City Solicitor Gil Schipani to speak on this matter. Attorney Schipani stated that the City's position is that the liquor liability insurance must be issued in the same name as the license holder. In this situation, this has never occurred. He indicated that Ms. Tucker put forth every effort to communicate on multiple occasions with the insurance company and the licensee and that the name has to be changed in order to be in compliance. In response to Attorney Schipani, Ms. Tucker stated that several different certificates have been submitted by this licensee. Two of the certificates showed the name of the insured to be the corporation, Jeano's Restaurant, Inc. In addition to speaking with Mrs. Jean and sending a letter, she was in touch with the insurance company on several occasions and explained to them that the licensee is the individual and that the certificate had to be the same as the licensee, however, they would not make the change. The third certificate Mrs. Jean brought in had been altered with a hand written "dba" on the Certificate.

Attorney Creedon stated he knows Morse Insurance very well and that they will change this to just Mrs. Jean for now and he will go back before the board.

Attorney Schipani stated that a further issue is that in response to Ms. Tucker's letter, Mrs. Jean came back with a Certificate that appeared to be altered as it contained a hand written dba. A question of the intent of the licensee arises as to whether this is a fraudulent effort to appease the board. Ms. Tucker stated she faxed a copy of the altered certificate to Mike Lacey at Morse Insurance and received a call back from Laura Weisner who stated the certificate was not valid.

Attorney Creedon stated that Peerless Insurance is the Insuror and Morse is the agent. Ms. Tucker stated that what Laura Weisner had stated was that her name is on the bottom of the certificate and that the certificate was not valid as is. In response to questions from Attorney Creedon, Ms. Tucker stated that she had spoken to Mrs. Jean and the Insurance Company several times, beginning in early December, attempting to resolve this. In addition, she stated she wrote a letter to Mrs. Jean so that she could show it to the insurance agency. Ms. Tucker stated she had also faxed a copy of the Renewal Affidavit which states the Commission must have the liability insurance for the named licensee. Ms. Tucker stated that her concern is that the Board members will sign the renewal affidavit attesting they are in possession of the required certificates when, in fact, they are not because the certificate is not issued to the licensee.

Mr. Jean stated that the agent will not change the policy. Attorney Creedon stated the insurance agent is looking at the insured as being Jeano's Restaurant, Inc. This has not been before the Commission because the licensee made changed the business to the corporation after the license was issued. Attorney Creedon stated that as lawyers, both he and Councillor Brophy would suggest that the coverage is there even though the license is held by Berlangue Jean dba Jeano's Restaurant. He stated he is willing to correct the technicality within the next thirty days or by the next meeting but the intent of that statute is clearly is to protect the public. If there is a claim it will be covered under Berlangue Jean dba Jeano's Restaurant.

Commissioner Wood asked if Jeano's Restaurant, Inc. is owned solely by them and whether Berlangue Jean is the president. In response, Dieulifaite Jean stated he and his wife are everything on the corporation. Commissioner Wood stated that if someone sued them, the policy of the corporation would cover any damages.

Attorney Schipani stated the names are supposed to be in line as far as the licensee and the insured. Commissioner Wood indicated it gets to the same point anyway.

Commissioner Kelley asked if they could be given until the next meeting and asked if there is some agreement where there would be coverage and the paperwork is aligned. Attorney Creedon stated that what happens in the mean time is they do not have a license to operate. Attorney Creedon stated he could bring this back before the board with the technicality that the License Commission needs. He indicated he could deal with Morse Insurance because the owner lives across the street from him.

The Adm. Asst. stated her concern is that the board members would be signing something that the City would be held responsible for if the insurance is in a name other than the way the license is issued. Attorney Schipani agreed, especially with the hand written information on the insurance certificate submitted. It was also reviewed that three insurance liability certificates were submitted by the licensee, each with a different named insured.

Attorney Creedon stated that in his research he could not find whether this had to be in place by November 30th. He stated it is truly the intent of the legislature that the new liquor liability situation is to make sure the public is protected as a result of the Rhode Island Fire. Attorney Creedon stated that as a lawyer and Councillor Brophy said as a lawyer, that Jean Berlangue dba Jean's Restaurant, Inc. is going to be covered if there is a claim and the insurance company

cannot not pay the claim if there is liability. Ms. Tucker stated that her concern is that the board is signing an affidavit stating they are in possession of the Certificate of Insurance of the named licensee.

Councillor Brophy asked if the renewal of the license could be issued on the condition that it be in a certain period of time. Ms. Tucker stated that all of the affidavits had to be mailed to the ABCC by December 31st. With regard to Jeano's Restaurant, a letter was sent indicating a special meeting would be held to address Mrs. Jean's license renewal.

Commissioner Wood stated that with the Certificates submitted, there is no question that the City is liable. Attorney Creedon stated the minimum amounts are a half million and a million so there is plenty of coverage.

Mr. Jean stated that he has gone to this insurance company for fifteen years and has always had coverage. Mrs Tucker stated the question is with the difference in the license holder and the insured.

In response to Commissioner Kelley, Attorney Schipani stated it looks as if the City is protected but then if something were to happen and it came down to a technicality of a name then the City is at fault.

Commissioner Wood asked if he is essentially worried that if someone gets hurt and they don't sue Jeano's the corporation but instead they sue the City, the City has a much lower liability threshold. Attorney Schipani stated it is a concern that the City wants to address and they will not turn a blind eye to it.

Attorney Creedon indicated that if Mr. Jean had come to him weeks ago instead of yesterday, he certainly would have cleared it up.

Ms. Tucker stated that this has been sent to the ABCC with the explanation there is a meeting today. Commissioner Wood asked if the State would reject this and the Adm. Asst. stated they could but she had explained that the signed affidavit will be sent next week. Attorney Creedon stated he is obviously fairly well connected with the people at the ABCC and he stated that with the City Solicitor and Bonnie's input they could explain in a jointly signed letter what happened so that nothing is done until he comes back before the board. Attorney Creedon stated he does not see any risk by the Commission signing the renewal.

In response to Commissioner Kelley's question as to how soon he could get together with his neighbor to change the certification, Attorney Creedon stated he could have this done next week and get it back in. He indicated he could deal directly with the owners of the insurance agency.

Ms. Tucker stated that there were a number of licensees who had submitted Insurance Certificates with names that were not exactly as the license was held and with the exception of Jeano's, all of the names had been changed to match the name on the license or added to the Certificate.

The Adm. Asst. stated that the Commission has to either vote to approve the renewal of the license or disapprove the renewal.

Commissioner Wood asked the Asst. City Solicitor what the legal posture the license would be placed in relative to the liquor license and whether he would have to stop serving until the change is made. Attorney Schipani stated he would have to take that under advisement.

Attorney Creedon stated he would offer the opinion that if the Commission renews this it is renewed until there is a valid decision.

Ms. Tucker stated that all the renewals which the Commission approved at the December 9th meeting were pending compliance with the liquor liability insurance and the certificate of inspection requirements. This renewal application was sent in unsigned. Attorney Creedon stated he should have called the number on the original notice sent out in July to try to resolve this. He assured the Commission he would clear this up as far as the insurance. He indicated they do not want to lose the business and require Mr. Jean to go through the process of getting a new license.

A motion was made by Commissioner Wood to approve the renewal of the license with the understanding that by the January meeting, they have a Certificate of Liability Insurance changed to match up with the license holder's name. The motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

It was agreed that the 2011 liquor license could be issued to Mr. Jean.

4. Hearing on the request from the Brockton Firefighters Union Local 144 – Archie Gormly, Jr., Manager, for a Special One-day Permit to sell all alcoholic beverages at 80 Perkins Avenue on Thursday, January 13, 2011, from 5:00 p.m. to 11:00 p.m.

Present was Archie Gormley, 53 Rockland Drive who stated he is president of the Local 144. He stated that the president of the State organization of professional firefighters is retiring after 25 years and this will be a meet and greet for the candidate running for that position. It is a social gathering for the members of the area fire departments to meet the candidate.

Councillor Brophy asked to be recorded in support of the application.

A motion was made by Councillor Wood to approve the one-day permit which motion was seconded by Commissioner Fontaine. All members voting in the affirmative, the motion carried.

With no further business to come before the Commission, the meeting was adjourned.

Respectfully submitted,

Joseph P. Kelley
Acting Chairman

APPROVED:

Paul D. Sullivan, Commissioner

Bruce G. Dansby, Commissioner

Joshua J. Wood, Commissioner

Scott H. McDuffy, Commissioner

Fred Fontaine, Alternate Commissioner

Kathy Kenney, Alternate Commissioner