

STATE OF NEW HAMPSHIRE
THE GOVERNOR AND THE EXECUTIVE COUNCIL

Docket No. 10-001

In re: Mark Bodi

DECISION AND ORDER

The following decision and order is issued following a hearing held on September 20 through September 23, 2010 pursuant to RSA 4:1 on the Petition brought by Attorney General Michael Delaney for the removal of Liquor Commissioner Mark Bodi. Upon the conclusion of public deliberations held on September 27, 2010, a majority of the Executive Council, with the concurrence of the Governor, voted to remove Mr. Bodi as Chairman of the Liquor Commission and to reprimand him for his conduct in connection with the Liquor Enforcement Division's investigation into violations by the Railroad Tavern in Keene, New Hampshire in December 2009.

I. BACKGROUND:

1. Mark Bodi is a duly appointed Commissioner of the State Liquor Commission appointed by the Governor with the consent of the Executive Council pursuant to RSA 176:1. Mr. Bodi is an unclassified employee who was appointed to a term ending July 1, 2013. In addition, on February 13, 2008, Mr. Bodi was appointed as Chairman of the Liquor Commission in accordance with RSA 176:2.

2. In mid-January, 2010, following notification that two Liquor Enforcement Division investigators, through their union representative, had complained to their respective offices that Representative Dan Eaton and Bodi had interfered with an ongoing liquor

enforcement investigation of the Railroad Tavern in Keene, New Hampshire, the Attorney General commenced an investigation into the complaints.

3. At the conclusion of that investigation, the Attorney General filed with the Governor and Council a petition for the removal of Bodi from the Liquor Commission on the basis that Bodi's conduct with respect to the Liquor Enforcement Division's investigation of the Railroad Tavern constituted malfeasance, misfeasance, and/or unfitness to perform his assigned duties, which warranted his removal from office.

II. LIQUOR INVESTIGATION INTO THE RAILROAD TAVERN

4. The testimony adduced at the removal hearing in this matter and the documents introduced into evidence confirm the following enumerated facts about the Liquor Enforcement investigation into violations at the Railroad Tavern and Mr. Bodi's conduct in connection with that investigation:

5. On or about December 14, 2009, two investigators from the Enforcement Bureau of the Liquor Commission, Sergeants Fussell (Fussell) and Elliott (Elliott) obtained and executed a search warrant for the Railroad Tavern in Keene as part of an investigation into allegations of over service of alcohol to patrons. A member of the Keene police department accompanied Fussell and Elliot in executing the warrant.

6. This search warrant authorized the investigators to seize video surveillance tapes for the time period from 9:00 p.m. on December 12, 2009 through 12:00 a.m. on December 13, 2009, and to seize the media storage devices used to record the events at the tavern.

7. Toward the conclusion of the execution of the search warrant, Representative Daniel Eaton arrived at the tavern. Eaton was in Keene attending a county delegation meeting on

December 14, 2009 when he received a text message from Randy Filiault, the owner of the Railroad Tavern, that a search warrant was being executed at the tavern. About two hours after receiving the text message and following the conclusion of the county delegation meeting, at approximately 8:30 to 9:00 p.m., Eaton, accompanied by Rep. Gus Lerandau, went to the Railroad Tavern. Eaton conversed first with Filiault's wife, Holly, while Filiault and the investigators were behind the bar downloading video from the tavern's camera equipment. Moments later, Eaton spoke to Fussell and then was led by Holly Filiault behind the bar to speak with Filiault. After Fussell and Elliott completed what they believed was a download of the 3 hours of video, they wrote out a property receipt for the CD's of video they took and left the tavern.

8. After leaving the tavern, Fussell advised his superior, Major Todd Feyrer, that the warrant had been executed and that Eaton had been present. Liquor Enforcement Chief Eddie Edwards ("Edwards") was also informed that night about the execution of the warrant and he immediately called Bodi to let him know that Eaton had been present.

9. The same evening, Eaton also spoke on the phone with Bodi. Bodi acknowledges talking to Eaton after the execution of the first search warrant. Eaton told Bodi that he believed that the Liquor Enforcement Bureau was targeting the Railroad Tavern. Bodi indicated to Eaton that he would look into the matter.

10. On the morning of December 15, 2009, Fussell determined that the video CDs that he had seized from the Railroad Tavern contained only nine minutes of video and not the specified three hours authorized by the warrant.

11. As a consequence of this discovery and without consulting with Bodi, Fussell and

Elliot sought and obtained a second search warrant to return to the tavern that day to obtain the needed video footage.

12. The second search warrant was executed at about 3:00 p.m. on December 15, 2009. After initially attempting and failing to download the video footage a second time, Fussell and Elliot proceeded to photograph and seize the video equipment as authorized by the search warrant.

13. After returning to Liquor Commission headquarters, Fussell had problems accessing the video in the equipment and had to contact Filiault for the password. According to Fussell, Filiault was agitated, refused to provide the password, and pressed Fussell to return the equipment the next day.

14. Eaton called Bodi a second time soon after the execution of the second search warrant. Eaton told Bodi that the investigators had ripped equipment off the walls and exceeded the scope of the search warrant. During this call, Bodi asked Eaton what he (Bodi) should do. Eaton responded by telling Bodi that he should "call the owner."

15. Following this second call with Eaton, Bodi called Edwards, who was still at the office. Edwards explained the execution of the second warrant to Bodi and there was some discussion about returning the equipment to Filiault. Edwards testified that Bodi seemed panicked about the matter. Bodi and Edwards ended this conversation by agreeing to meet the next morning.

16. Edwards met with Bodi the following day, Wednesday, December 16, 2009 in Bodi's office. They discussed the case and Eaton's involvement. While Edwards was present, Bodi spoke again with Eaton. Eaton apparently related to Bodi in this conversation that Filiault needed his equipment back, and that Fussell had informed Filiault that it could not be returned

until the investigators were done with it. Edwards heard Bodi tell Eaton that the equipment would be returned.

17. When Bodi ended the call with Eaton, Edwards told Bodi that the equipment could not be returned because the evidence had not yet been obtained. Bodi ordered Edwards to return the equipment. After leaving Bodi's office, and despite Edward's concern about returning the equipment without a Court Order, Edwards called Todd Feyrer and told him that the equipment would have to be returned that day. Edwards also advised Feyrer to make sure that he first had obtained the evidence.

18. The Liquor Commission's usual course of action in dealing with evidence seized pursuant to a search warrant is to obtain a court order authorizing return of the property to its owner when it was determined that it was no longer needed for the investigation, although there was testimony that, in some instances, a court order was obtained after-the-fact. This usual practice was subverted by Bodi's order that the equipment needed to be returned on the 16th of December, 2009.

19. In his testimony, Bodi acknowledged that he never asked Edwards about the facts underlying the investigation; he never reviewed the search warrant or the pictures taken of the scene by the Liquor investigators to determine whether, in fact, the investigators had acted within the scope of their authority; he never asked if there was a reason why the recording equipment needed to be retained and he never directed Edwards to assure that the evidence was secured prior to the equipment being returned. Bodi acknowledged in his testimony that he ordered the return of the equipment to get Eaton off his back.

20. Because investigators in the Liquor Enforcement Bureau feared that Bodi would

direct them not to institute an action against the Railroad Tavern, they undertook to quickly serve an Administrative Notice of Agency Action against the licensee on or about December 17, 2009, the day after Bodi directed them to return the video equipment to Filiault.

21. Subsequent to his phone conversations with Eaton, Bodi also called Filiault to tell him that the equipment would be returned. During this conversation, Bodi agreed to meet with Filiault and Eaton to discuss the problems at the Railroad Tavern.

22. Bodi met with Eaton and Filiault at Bodi's office some weeks after the second warrant was executed. Rep. Gus Lerandeau also attended this meeting. Bodi acknowledged that he knew that Liquor Enforcement had issued a Notice of Violation against the Railroad Tavern on December 17, 2009. Bodi listened to Filiault's complaints about the liquor investigators and his allegations that his business was being targeted. At one point in the meeting, Bodi produced a letter of complaint filed by an adjacent condo association complaining about noise and other problems at the Tavern. The Notice of Violation was not discussed. At the conclusion of the meeting, Bodi asked Eaton to remain in his office, whereupon he asked Eaton to talk to Filiault about the possibility of settling the administrative action.

23. Notwithstanding Bodi's meeting with Filiault, the administrative action that was commenced by the Enforcement Division on December 17, 2009 resulted in the surrender by Filiault of his license and an agreement that neither he nor his wife would engage in any activity involving the service of alcoholic beverages for a period of five years.

24. On the same day the Notice of Violation was issued, two of the liquor enforcement officers filed a complaint with their union representative concerning the perceived improper involvement of Commissioner Bodi and Representative Eaton in an ongoing law enforcement

action which complaint prompted the Attorney General's investigation into this matter.

25. During the course of the hearing on this matter, Bodi acknowledged that at the time of his involvement in these events, he was in an emotionally weakened state as a result of the pressure he felt from Eaton's involvement and that his actions relative to the Railroad Tavern matter were prompted by a desire to appease Eaton. Bodi also acknowledged that he exercised poor judgment in the handling of the matters involving the Railroad Tavern.

26. Misfeasance is the improper performance of some act, which a person may lawfully do. Blacks Law Dictionary, 6th Ed. 1991.

27. On the basis of the testimony and evidence presented in this case, we find by a preponderance of the evidence that Bodi committed misfeasance with respect to the discharge of his duties as Chairman of the New Hampshire Liquor Commission in regard to his involvement with the Liquor Enforcement Bureau's investigation involving the Railroad Tavern in December 2009.

ON THE BASIS OF THE FOREGOING, effective upon the approval of this Decision and Order by at least three members of the Executive with the concurrence of the Governor, witnessed by their signatures below, and in accordance with the actions taken following the September 27, 2010 deliberation session, it is ordered that:

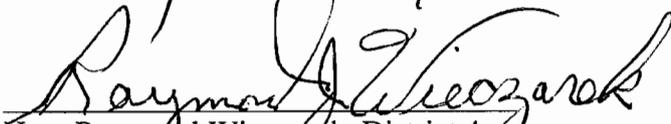
- A. Commissioner Mark Bodi be removed as chairman of the Liquor Commission, but remain in office as commissioner; and
- B. Commissioner Mark Bodi be reprimanded for his conduct in connection with the Liquor Enforcement investigation into the Railroad Tavern in December 2009.



Hon. John D. Shea, District 2



Hon. Beverly Hollingworth, District 3



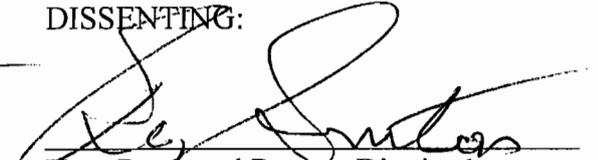
Hon. Raymond Wiczorek, District 4

CONCURRING:

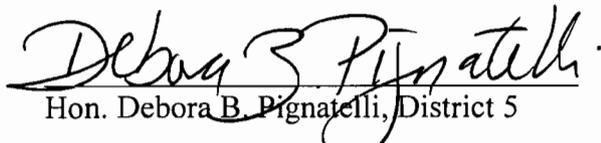


His Excellency John H. Lynch
Governor

DISSENTING:



Hon. Raymond Burton, District 1
To the removal as Chairman of the Liquor Commission only



Hon. Debora B. Pignatelli, District 5

WITNESSED:



Donald J. Perrault, Esq.
Counsel for the Executive Council



Jeffrey A. Meyers, Esq.
Counsel for the Governor

DATED OCTOBER 11, 2010 AT CONCORD, NH