



CITY OF SAINT PAUL

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RECEIVED IN LIEP

JUL 29 2005

MEMORANDUM

**TO: MARCIA MOERMOND
LEGISLATIVE HEARING OFFICER**

**FROM: GERALD HENDRICKSON
DEPUTY CITY ATTORNEY** *GH*

RE: MEASUREMENT UNDER LEGISLATIVE CODE 409.06 (i)(2)

DATE: JULY 28, 2005

FACTS

On July 15, 2005, you sent me a memo asking for my advice concerning a matter pending before you for a legislative hearing. Paul and Katrina Wentzel, doing business as the Wine Thief, applied for an off-sale liquor license for 1785 Saint Clair Avenue. James Thomas objected on the grounds that this location was within ½ mile of his off-sale liquor store, Thomas Liquors, in violation of Legislative Code § 409.06(i)(2). The Office of License, Inspections, and Environmental Protection (LIEP) provided evidence that measuring building-to-building, the new location was more than ½ mile from Mr. Thomas' location. LIEP therefore recommended that the license be issued. Mr. Thomas contended that the measurement should be made from the lot line at 1785 Saint Clair Avenue to the lot line of his store, in which case the Wentzel's store would be within ½ mile of Thomas Liquors. You asked the following:

QUESTION

Should the ½ mile measurement required in Legislative Code § 409.06(i)(2) be made from lot line to lot line?

DISCUSSION

In my opinion, the measurement should not be made from the lot lines for the following reasons.

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Legislative Code § 409.06 (i) deals with license location restrictions. The ordinance in question, Legislative Code § 409.06(i)(2) states:

No off-sale license shall be issued to any location within a half-mile radius of any existing off-sale establishment, except in the downtown business district, where the distance requirement shall be a radius of three hundred (300) feet. Notwithstanding the foregoing, no off-sale liquor establishment shall be located within a half-mile radius of the Xcel Energy Center.

According to this ordinance, then, the measurement of the ½ mile radius should be from a "location" being licensed to an "establishment" with an existing license. Neither of these terms are defined by Legislative Code chapter 409. The word "establishment" is used frequently in this chapter, usually in the context that suggests the word means the place of business, which, as Director Janeen Rosas points out in her July 14, letter to you, is the Webster's Dictionary definition of the word. However, the phrase "place of business" is no clearer than "establishment" since that phrase arguably could also include all of the property to the lot line. There is no case law applying Legislative Code § 409.06(i)(2) or defining these terms. When, as here, the words are ambiguous, the meaning is determined by ascertaining the legislative intent. Minn. Stat. § 645.16.

A number of factors point to the conclusion that the City in enacting Legislative Code § 409.06(i)(2) intended the measurement in this case to be made from the building, and not the lot line. The most persuasive consideration is that in several other situations, Legislative Code chapter 409 expressly requires measurements to be made from the lot lines. It would follow that if the Council wanted the measurement in this case to be from the lot lines, it would have said so, as it did in these other situations.

In particular, in the very next sub-section, Legislative Code § 409.06 (i)(3) states:

No license shall be issued for an off-sale location which is within three hundred (300) feet of residentially zoned property, a park or a licensed child-care center, said three hundred (300) feet being calculated and computed as the distance **measured from the property line** of the premises or building proposed as the location for the off-sale liquor license **to the property line** of any residentially zoned property, park or child care center in the area for which the license is sought.

Thus the City Council knew how to require measurements from the lot line rather than from the building when that was its intent. The lack of any mention of the lot line when measuring between two off-sale liquor establishments, when the Council has expressly required lot line

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measurements in the same section when measuring from a liquor establishment to a residential property, a park or a child-care center, strongly suggests that it did not intend the off-sale to off-sale measurement to be from the lot lines.

Note that the Legislative Code also expressly requires measurements to be from lot line to lot line in the case of certain measurements relating to outside service areas (Legislative Code § 409.06 (g)), and measurements between licensed premises and a church or school (Legislative Code § 409.06 (n)) and certain measurements relating to transfers or changes in service areas (Legislative Code § 409.11 (b) and (d)).

I would also point out that when ascertaining the legislative intent, the purpose of the legislation is a factor. See Minn. Stat. § 645.16 (1), (3), and (4). The purpose of liquor regulation is to protect the public morals. Dunnell Minn. Digest INTOXICATING LIQUORS §§ 2.01 (4th ed.). The purpose here is to protect the public from an undue concentration of liquor establishments, not to protect the existing license holder from competition.

The fact situation here is typical. The difference between measuring from the buildings or from the lot line is a matter of a few feet. As to the concentration, this difference of a few feet on a ½ mile measurement is negligible, so, in the absence of express language requiring lot line to lot line measurement, there is no reason to suppose the Council intended that method of measurement as more protective of public morals.

Finally, the interpretation of LIEP is further indication of legislative intent, unless it is clearly contrary to the explicit provisions of the law. Minn. Stat. § 645.16 (8). Here it appears that LIEP's interpretation of this provision is that the measurement is not made from the lot lines when applying Legislative Code 409.06 (i)(2). That ordinance, at a minimum, does not expressly require measurements from the lot lines, so LIEP's method is entitled to be followed.

CONCLUSION

Nothing in the ordinances or any other law states that the measurements between Thomas Liquors and the Wine Thief be from lot line to lot line. LIEP's building-to-building measurement for the purposes of the ½ mile requirement found in Legislative Code § 409.06 (i)(2) is the legally correct method of measurement for that requirement.

cc: Members of the City Council
Mayor Randy Kelly
Manuel Cervantes
Trudy Moloney
Janeen Rosas
Christine Rozek