

LICENSE APPEAL COMMISSION
CITY OF CHICAGO

Cocina Mexicana Express, Inc.)	
Jesus Davila, President)	
Applicant (COP-IA))	
for the premises located at)	Case No. 08 LA 69
3616 West 26 th Street)	
)	
v.)	
)	
Department of Business Affairs & Licensing)	
Local Liquor Control Commission)	
Mary Lou Eisenhauer, Acting Director)	

ORDER

OPINION OF CHAIRMAN FLEMING JOINED BY COMMISSIONER SCHNORF

On September 5, 2008, this application for a Consumption on Premises - Incidental Activity liquor license was denied on the basis that the business location is located within 100 feet of a school in violation of 235 ILCS, 5-6-11(a), the Illinois Liquor Control Act. On October 15, 2008, the applicant filed a timely notice of appeal with the Commission. A hearing was held on December 11, 2008, and the matter was continued until January 7, 2009, for the applicant to present additional evidence. On that date the matter was taken under advisement.

At the hearing the parties entered into written stipulations concerning the relevant measurements. It was specifically stipulated that the Castellanos Middle School of the Chicago Public School District is located at 2524 South Central Park Avenue, Chicago, Illinois. Also stipulated were the facts that the:

- a. The distance from the southwest corner of the property line of the Castellanos Middle School to the northeast corner of the Applicant's building, 3614 W. 26th Street, is 16 feet, 5 inches.
- b. The distance from the rear door of Applicant's premises to the southwest corner of the property line of the Castellanos Middle School is 93 feet.

A summary of relevant testimony at the hearing is relevant to this opinion. Jesus Davila, the applicant, currently operates a restaurant at 3616 W. 26th Street. He is applying for an incidental liquor license so he can serve alcohol to his restaurant customers. 26th Street in this area is a commercial district and there are currently four restaurants within 300 feet of his restaurant that have liquor licenses. To the east of his restaurant is a tavern operating since at least October 30, 1981. This tavern would be within 100 feet of the property line of the school. If one measured around the front of the Applicant's building through the alley to the east of his building, the distance would be in excess of the 100 foot requirement.

Introduced into evidence at the hearing as Applicant's Exhibits #3 and #4 are letters from Myriam Romero, the Principle of Castellanos School and from Alderman Muñoz of the 22nd Ward. Alderman Muñoz does not object to the issuance of this license. Principal Romero not only supports this application but goes on to set a glowing testimonial to Mr. Davila's involvement with Castellanos School and the entire community.

235 ILCS, 5-6-11(a) is the section of the Illinois Liquor Control Act that controls the issuance of this license. It states no license shall be used for sale at retail any alcoholic liquor within 100 feet of any church or school other than an institution of higher learning... Relevant

case law has defined the measurement to in school cases to be boundary line to boundary line. Since the stipulation establishes the boundary line to boundary line measurement to be less than 100 feet the Illinois Liquor Control Act bans the issuance of this license.

This Commission is a creature of statute and has only such powers as given to it by state statute. In this case the only issue to be decided is whether the denial of the incidental activity license was correct based on the location of the Applicant's property line to the school's boundary line. It was so established. The fact that a liquor license has been issued in apparent violation of the 100 foot rule to Jacaranda's Sports Bar since 1981 may be inequitable but this Commission does not have equitable powers.

By all accounts Mr. Davila is exactly the type of citizen one wants to hold liquor licenses in the city. Unfortunately this Commission does not have the power to grant him the license.

The decision of the Department of Business Affairs and Licensing/Local Liquor Control Commission is affirmed.

COMMISSIONER KOPPEL'S CONCURRING OPINION

This Commissioner concurs with Chairman Fleming's opinion.

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: February 20, 2009

Dennis M. Fleming
Chairman

Irving J. Koppel
Member

Stephen B. Schnorf
Member