



City of Grand Island

Tuesday, September 26, 2006

Council Session

Item E9

**Public Hearing Pursuant to the Nebraska Liquor Control
Commission Rules and Regulations 53-134.04 Regarding
Complaints Filed Against OK Liquor, 305 West Koenig Street,
Liquor License "D-15914"**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: September 26, 2006

Subject: Public Hearing Pursuant to the Nebraska Liquor Control Commission Rules and Regulations §53-134.04 Regarding Complains Filed Against OK Liquor, 305 West Koenig Street Liquor License “D-15914”

Item #'s: E-9 & I-2

Presenter(s): RaNae Edwards, City Clerk

Background

Nebraska Liquor Control Commission Rules and Regulations §53-134.04 states that:
Any five residents of the city or village shall have the right to file a complaint with the local governing body of such city or village stating that any retail licensee subject to the jurisdiction of such local governing body has been or is violating any provision of the Nebraska Liquor Control Act or the rules or regulations issued pursuant to the act. Such complaint shall be in writing in the form prescribed by the local governing body and shall be signed and sworn to by the parties complaining. The complaint shall state the particular provision, rule, or regulation believed to have been violated and the facts in detail upon which belief is based. If the local governing body is satisfied that the complaint substantially charges a violation and that from the facts alleged there is reasonable cause for such belief, it shall set the matter for hearing within ten days from the date of the filing of the complaint and shall serve notice upon the licensee of the time and place of such hearing and of the particular charge in the complaint. The complaint shall in all cases be disposed of by the local governing body within thirty days from the date the complaint was filed by resolution thereof, which resolution shall be deemed the final order for purposes of appeal to the commission as provided in section 53-1,115.

Discussion

The City Clerk’s Office received ten (10) written, signed, and sworn complaints between August 30, 2006 and September 12, 2006 relating to OK Liquor located at 305 West

Koenig Street. On September 12, 2006 the City Clerk notified OK Liquor of the hearing date set for September 26, 2006.

The ten complaints list the sale of alcohol to a minor on several occasions by OK Liquor as the violation and basis for the Public Hearing.

Nebraska Liquor Control Commission Rules and Regulations §53-180 – Sale to minors and incompetents; prohibited states:

No person shall sell, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors, to or for any minor or to any person who is mentally incompetent.

The Council needs to first find that the complaints substantially charge a violation and that from the facts alleged there is reasonable cause for such belief and if so then proceed to the hearing.

If reasonable cause is found, a Public Hearing will be held to allow for the testimony regarding these complaints. City Council will need to take action on one of the following options:

1. Take no action – this will result in the continuation of all rights and privileges of this license
2. Cancel – this will discontinue all rights and privileges of this license
3. Revoke – this will permanently void and recall all rights and privileges of this license

Alternatives

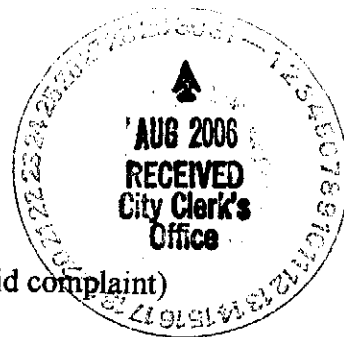
It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Take no action
2. Cancel Liquor License “D-15914” held by OK Liquor
3. Revoke Liquor License “D-15914” held by OK Liquor

Recommendation

City Administration recommends that the Council review the complaints and if reasonable cause is found hear all testimony offered based on the Nebraska Liquor Control Commission Rules and Regulation criteria for revocation of a Liquor License and render a decision after all testimony has been received.

LIQUOR LICENSE CITIZEN COMPLAINT



(Must be a resident of the City of Grand Island in order for this to be a valid complaint)

Name and Address of Business for which complaint is filed against:

OK Liquor of 305 West Koenig, Grand Island, NE 68801 / liquor license D-15914

Nebraska Liquor Control Act Rules or Regulations Violated:

53-180. Sale to minors and incompetents: prohibited. No person shall sell, give away, dispose of, exchange, or deliver, or permit the sale, gift, or procuring of any alcoholic liquors, to or for any minor or to any person who is mentally incompetent.

Facts in detail upon which belief of violation is based (attach additional pages if necessary):

According to the Nebraska Liquor Control Commission and the Hall County court, OK Liquor and its representatives have been cited for the sale of alcohol to a minor on the following dates:

08/30/94 – for this citation Harold Carmichael was fined in Hall County court \$100

(the Nebraska Liquor Control Commission penalized the business with a five day license suspension)

8/6/1997 – for this citation Harold Carmichael was fined in Hall County court \$500

(the Nebraska Liquor Control Commission penalized with license suspension)

5/9/2003 – for this citation Harold Carmichael was fined in Hall County court \$100

(the Nebraska Liquor Control Commission penalized the business with twelve days no sale of alcohol or a \$600 fine)

9/30/2005 – for this citation Harold Carmichael was fined in Hall County court \$300

(the Nebraska Liquor Control Commission penalized the business with two days no sale of alcohol and 34 additional days of either no sale or a \$3400 fine)

July 31, 2006 – OK Liquor was subjected to a mandatory meeting with the Nebraska Liquor Control Commission due to a history of known sales to minors in the community of Grand Island.

Prior to owning OK Liquor, Harold Carmichael was twice convicted of selling alcohol to a minor:

11/15/86 – for this citation Harold Carmichael was fined in Hall County Court \$200

08/25/89 – for this citation Harold Carmichael was fined in Hall County Court \$200


Signature of Complainant

Name of Complainant (Please Print):

Address:

Virginia Oseka

1528 Windsor Rd.

Grand Island, NE 68801

308-381-4959

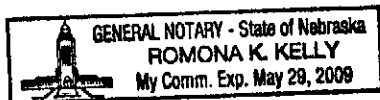
(Phone Number)

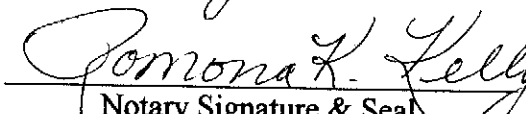
State of Nebraska)

) SS:

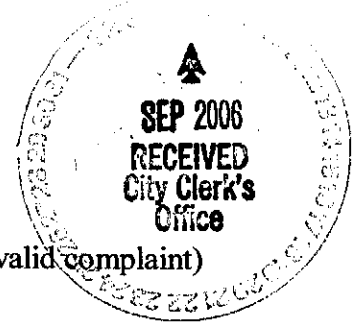
County of Hall)

Subscribed in my presence and sworn to before me this 30th day of August, 2006.




Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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08/25/89 – for this citation Harold Carmichael was fined in Hall County Court \$200

Heather Sikuta
Signature of Complainant

Name of Complainant (Please Print):

Address:

Heather Sikuta

2222 Bellwood Dr. Apt. 102

Grand Island, NE 68801

(308) 730-2156

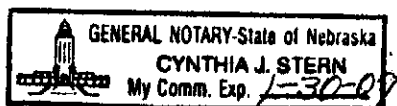
(Phone Number)

State of Nebraska)

SS:

County of Hall)

Subscribed in my presence and sworn to before me this 31 day of August, 2006.



Cynthia J. Stern
Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



(Must be a resident of the City of Grand Island in order for this to be a valid complaint)

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OK Liquor of 305 West Koenig, Grand Island, NE 68801 / liquor license D-15914

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by Ann Rook
Signature of Complainant

Name of Complainant (Please Print):

Address:

609 South Cleburn
Grand Island, NE 68801

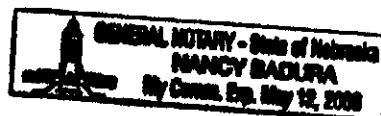
3081 389-2808
(Phone Number)

State of Nebraska)

SS:

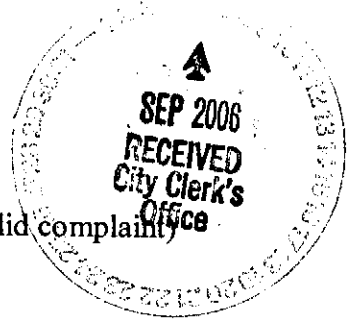
County of Hall)

Subscribed in my presence and sworn to before me this 6th day of September, 2006.



Nancy Badura
Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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Robert Bank

Signature of Complainant

Name of Complainant (Please Print):

Address:

Robert Bank

1616 Stagecoach Rd

Grand Island, NE 68801

308-382-5034

(Phone Number)

State of Nebraska)

) SS:

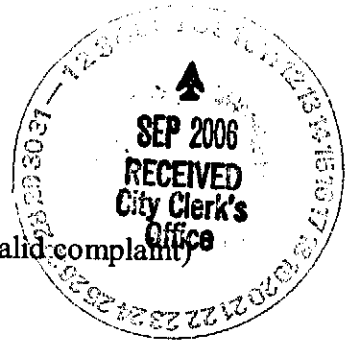
County of Hall)

Subscribed in my presence and sworn to before me this 31st day of August 2006.



Keri M. Ingold
Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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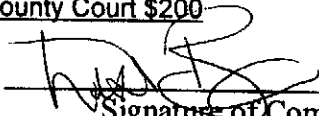
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Signature of Complainant

Name of Complainant (Please Print):

Lisa Baasch

Address:

2408 Arrowhead Rd
Grand Island, NE 68801

308/381-9847

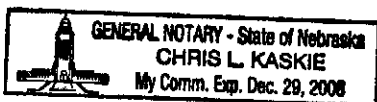
(Phone Number)


State of Nebraska)

SS:

County of Hall)

Subscribed in my presence and sworn to before me this 7th day of September, 2006.





Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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Barbara Clinch

Signature of Complainant

Name of Complainant (Please Print):

Address:

Barbara Clinch

2605 Arrowhead Rd

Grand Island NE 68801

308/381-3045

(Phone Number)

State of Nebraska)

) SS:

County of Hall)

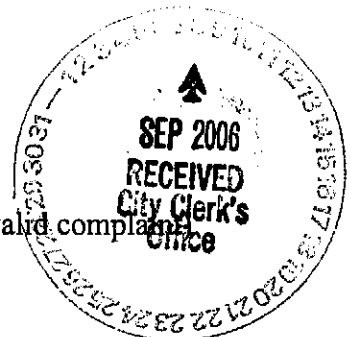
Subscribed in my presence and sworn to before me this 7th day of September, 2006.



Chris L. Kaskie

Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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Greg Enck

Signature of Complainant

Name of Complainant (Please Print):

Address:

Greg Enck

637 E. Ashton

Grand Island, Ne. 68801

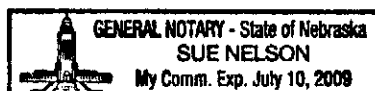
(Phone Number)

State of Nebraska)

SS:

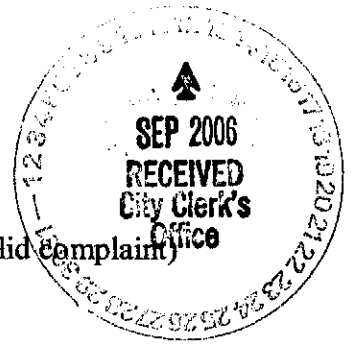
County of Hall)

Subscribed in my presence and sworn to before me this 8th day of Sept., 2006.



Sue Nelson
Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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Wilfred D. Clinch

Signature of Complainant

Name of Complainant (Please Print):

Address:

WILFRED D. CLINCH
129 RIFLEHEAD TERRACE
GRAND ISLAND, NE 68803
382-6-223

(Phone Number)

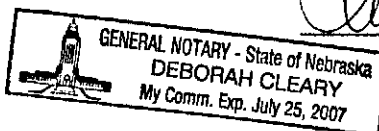
State of Nebraska)

SS:

County of Hall)

Subscribed in my presence and sworn to before me this 11th day of September 2006.

Deborah Cleary
Notary Signature & Seal



LIQUOR LICENSE CITIZEN COMPLAINT



(Must be a resident of the City of Grand Island in order for this to be a valid complaint)

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Connie S. Bales

Signature of Complainant

Name of Complainant (Please Print):

Address:

Connie S. Bales

2815 Stagecoach Cr.

Grand Island, NE 68801

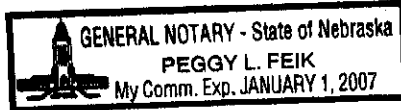
308.384.2922

(Phone Number)

State of Nebraska)

) SS:

County of Hall)



Subscribed in my presence and sworn to before me this 11 day of September, 2006.

Peggy L. Feik
Notary Signature & Seal

LIQUOR LICENSE CITIZEN COMPLAINT



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08/25/89 - for this citation Harold Carmichael was fined in Hall County Court \$200

Harold Carmichael
Signature of Complainant

Name of Complainant (Please Print):

Address:

411 E 19th

Grand Island, Ne 68801

708-387-4045
(Phone Number)

State of Nebraska)

) SS:

County of Hall)

Subscribed in my presence and sworn to before me this 11th day of Sept, 2006.

A. David McIntosh

Notary Signature & Seal





*Police Department
To Protect and Serve Since 1872*

*Working Together for a
Better Tomorrow. Today.*

Criminal Division

Captain Kerry Mehlin	Lt. Brad Brush
Inv. Jim Duering	Inv. Dean Kottwitz
Inv. Mike Nelson	Inv. Sara Mann
Inv. Craig Dvorak	Inv. Mark Wiegert
Inv. Ben Arrants	
Evidence Officer Mike Vasey	

Contacts with OK Liquor and owners Harold & Kathy Carmichael

11-15-86 Harold Carmichael charged w/ Selling alcohol to Minor. Fined \$200+costs.

08-25-89 Harold Carmichael charged w/ Selling alcohol to Minor. Fined \$200+costs.

11-26-94 Harold Carmichael charged w/ Selling cigarettes to Minor. Fined \$100+costs.

08-06-97 Harold Carmichael charged w/ Selling alcohol to Minor. Fined \$500+costs.

02-16-99 Harold Carmichael charged w/;
Discharging of Firearm at Occupied Vehicle. Fined \$500+costs.
Use of Firearm to Commit Felony. Fined \$500+costs.

05-09-03 Harold Carmichael charged w/ Selling alcohol to Minor. Fined \$100+costs.

12-30-03 Harold Carmichael charged w/ Selling cigarettes to Minor. Fined \$25+costs.

05-21-04 Harold reported minor attempting to purchase alcohol. Minor cited.
County Attorney dismissed the charge 07-02-04

10-30-04 Harold Carmichael reported minors attempting to purchase alcohol.
County Attorney dismissed the charge 10/04.

03-19-05 Kathy Carmichael charged w/ Selling cigarettes to Minor. Fined \$50+costs.

09-30-05 Harold Carmichael charged w/ Selling alcohol to Minor. Fined \$300+costs.

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Inv. Craig Dvorak	Inv. Mark Wiegert
Inv. Ben Arrants	
Evidence Officer Mike Vasey	

01-23-06 Kathy Carmichael charged w/ Selling alcohol to Minor, who was arrested for DUI at W. South Front & Eddy, on 01-14-06. Pending.

06-18-06 Harold Carmichael contacted by GIPD Officer reference 26 year old male who made the alcohol just purchased by the 26 year old male at OK Liquor available to a Minor while still on OK Liquor property. 26 year old male who made the alcohol available to the Minor was arrested for;

Possession of Controlled Substance (meth) [28-416] Class IV FO

Procuring Alcohol to a Minor [53-180] Class III MO

Driving During Suspension [60-4,108] Class II MO

The 26 year old male was ultimately charged w/ Possession of Controlled Substance (meth) [28-416] Class IV FO

Respectfully submitted by

Lieutenant Brad Brush



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The Police Department has one additional contact with OK Liquor and owners Harold and Kathy Carmichael that occurred since 6-18-06 that should be included in the City Council packet.

8-9-06 Harold Carmichael reported a minor attempting to purchase alcohol. A minor was charged with attempting to purchase from OK Liquor and possession of alcohol acquired from another person.

Respectfully submitted by,

Chief Steven Lamken

NSP Contacts with OK Liquor

Harold and Kathy Carmichael are the partners for the Class D liquor license, #15914, DBA OK Liquor, 305 West Koenig. The license was issued on September 8, 1988. Upon reviewing case files, Inv. Rogers compiled this summary of the contacts that NSP officers have had with the Carmichaels at the establishment.

Prior to the NLCC issuing the license for the Carmichaels, Inv. Hruza conducted a background investigation for the NLCC. The interview report indicates that Harold is a High School graduate, who attended Kearney State College for 2 years. Included in his report is information that Harold Carmichael had been employed as a night sales clerk for Fine Liquor, from November 1979 to September 1986. From May 1986 to August of 1988, Harold was employed as a night sales clerk at OK Liquor, for the previous owner. Harold was convicted of a procuring (selling) alcohol for a minor charge while working at the store, on November 15, 1986. He plead guilty to the charge, and was fined \$200.00 and court costs. Carmichael then began to lease the store in 1988, with a purchase agreement worked out.

On August 30, 1994, Harold sold alcohol to a minor CI during an alcohol compliance check that was conducted by Inv. Jones. Harold was found guilty, and was fined \$100.00 and court costs by the Hall County Court. The NLCC suspended his liquor license for 5 days.

On May 20, 1995, Harold sold Tobacco to a minor CI during a tobacco compliance check that was conducted by Inv. Barnason. Harold pleads guilty, and was fined \$50.00 and court costs by the Hall County Court.

On August 6, 1997, Harold sold alcohol to a minor, and was cited by the Grand Island PD. (It is unknown if this was a compliance check.) Harold pleads guilty, and was fined \$500.00 and court costs by the Hall County court. The NLCC suspended his liquor license for both selling alcohol to a minor, and failure to use the ID book.

On February 12, 1999, the Grand Island PD and Inv. Adams investigated an incident where Harold was involved with a discharge of a firearm. Harold was originally charged with Firing a Weapon, a felony, and Use of a Weapon to Commit a Felony. The Hall County court amended the charges, and Harold was convicted of Attempt of a Class I misdemeanor, and Criminal Mischief in excess of \$100. Harold was fined \$500.00 for each count. The NLCC suspended his liquor license.

On May 9, 2003, Harold sold alcohol to a minor CI during an alcohol compliance check that was conducted by Inv. Zeleski and GIPD. He was fined \$100.00 and court costs, and the NLCC suspended his liquor license.

On March 19, 2005, Kathy Carmichael sold tobacco to a 15 year old minor CI during a tobacco compliance check, which was conducted by Inv. Rogers, GIPD, and Hall County SO. Kathy checked the minors new Nebraska Learners Permit, entered information into a calculator, and sold the tobacco to the minor. Kathy was cited by the SO.

On September 30, 2005, Harold sold alcohol to a 17 year old minor CI during an alcohol compliance check conducted by Inv. Rogers, GIPD, and the Hall County SO. The CI was extremely young looking, and Harold did not check her identification. The liquor license was suspended by the NLCC for 36 days.

**Inv. Lorri J. Rogers
Alcohol Tobacco Enforcement
Nebraska State Patrol**