

CITY OF WAUKESHA
BEFORE THE COMMON COUNCIL

In re:

CITY NEWS AND NOVELTY, INC.

Adult Oriented Establishment License:

License Year Beginning January 26, 1996

REQUEST FOR REVIEW OF DETERMINATION
PURSUANT TO § 68.08, WIS. STATS.

City News and Novelty, Inc., by its attorneys, Jeff Scott Olson, and Julian, Olson & Lasker, S.C., by Percy L. Julian, Jr., hereby requests, pursuant to § 68.08, Wis. Stats., the Common Council of the City of Waukesha to review its action, taken by resolution enacted and dated December 19, 1995, denying the renewal of an adult oriented establishment license for City News and Novelty, Inc., for the license year 1996, commencing January 26, 1996. The grounds on which this request is based are, inter alia, as follows and may be supported by additional submissions to be tendered to the Common Council before or during the time scheduled for the review requested herein:

1. Section 8.195 of the Waukesha Municipal Code, and in particular its requirements that adult bookstores obtain licenses in order to lawfully operate and its provisions, and lack thereof, governing the nonrenewal of such licenses are unconstitutional under the provisions of the First and Fourteenth Amendments to the

United States Constitution and Article I Section 3 of the Wisconsin Constitution.¹

2. Since § 8.195 of the Waukesha Municipal Code contains no standards which are applicable to the city's decision concerning whether or not to renew an existing license where proper and timely application has been made, this decision must be governed by those standards which are applicable to the issuance of new licenses, which pursuant to § 8.195(a) can only be denied if an officer, director, or stockholder is less than eighteen years of age, or if an officer, director, or stockholder has previously been found to have violated § 8.195. None of the grounds set forth in the resolution of December 19, 1995, relate to judgments of conviction of courts of record of previous violations of § 8.195 by the licensee's officers, directors, or stockholders; nor are any officers, directors or stockholders less than eighteen years of age.

3. By its terms § 8.195 requires that a finding of a violation have occurred prior to the decision concerning renewal of the license. No findings of violations of § 8.195 have been entered against any officers, directors or shareholders of City News and Novelty, Inc., except in the City of Waukesha Municipal Court, and these findings may not be employed collaterally to

¹ City News and Novelty, Inc., recognizes that the Common Council probably does not have jurisdiction to hold a city ordinance unconstitutional, and thus reserves the right to raise issues pertaining to the constitutionality of § 8.195 in state or federal court in an appropriate action at an appropriate time. Baird v. LaFollette, 72 Wis. 2d 1, 239 N.W.2d 536 (1976); England v. Medical Examiners, 375 U.S. 411 (1964).

support a non-renewal decision because the Waukesha Municipal Court is not a court of record. These alleged findings are not final and will either be affirmed or reversed in circuit court appeals of these municipal court convictions currently pending before the Circuit Court for Waukesha County. Therefore, at the time of the decision not to renew the license of City News and Novelty, the Common Council acted without any valid grounds in so doing.

4. The conviction in municipal court of Peggy Lindsley for having permitted a minor to enter City News and Novelty is not a ground for nonrenewal because Lindsley is not an officer, director or shareholder of City News and Novelty, Inc.

5. The conviction of Daniel Bishop for having permitted a minor to enter City News and Novelty on December 24, 1994, is not a proper ground for nonrenewal as Bishop was not shown to have personally participated in this event.

6. The convictions of Daniel Bishop for failing to have every room, booth or cubicle totally open to a public lighted aisle on November 30, 1994, December 1, 1994, and December 2, 1994, are not proper bases for nonrenewal as Mr. Bishop was not shown to have personally participated in these events.

7. The allegations that minors were permitted to loiter in City News and Novelty on July 23, 1995, October 18, 1995, and November 29, 1995, are not proper grounds for nonrenewal because no officer, director or shareholder has previously been found to have violated the ordinance as to these dates.

8. The convictions or prosecutions of patrons of City News and Novelty for violations of Wisconsin Statutes other than § 8.195 of the Waukesha Municipal Code are not available grounds for nonrenewal under the ordinance.

9. The convictions or prosecutions of patrons of City News and Novelty for violations of state statutes which are alleged to have entailed behavior contrary to § 8.195(9)(c) occurring on February 28, 1995, and March 12, 1995, are not violations of the ordinance by any officer, director or shareholder of City News and Novelty, Inc., and thus are not available grounds for nonrenewal.

10. Violations of the provisions of the ordinance by patrons or nonsupervisory employees are violations of which City News and Novelty, Inc., is a victim and is not a perpetrator.

Dated this 17~~th~~ day of January, 1996.


Respectfully submitted,

CITY NEWS AND NOVELTY, INC.,

By

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