1980

# Club Stanyon Street, A Utah Non-Profit Menbership Corporation v. Utah Liquor Control Commission : Brief of Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

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CLUB STANYON STREET, a Utah non-profit membership corporation,

Petitioner,

-v-

UTAH LIQUOR CONTROL COMMISSION,

Respondent.

Case No. 16384

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# BRIEF OF RESPONDENT

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Response to a Petition for Review of an Order of the Utah Liquor Control Commission.

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BRIEF OF RESPONDENT

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## NATURE OF THE CASE

Petitioner, a private liquor club, asks this court to review a Utah Liquor Control Commission order suspending the club's liquor license for one week.

## DISPOSITION BEFORE THE UTAH LIQUOR CONTROL COMMISSION

Subsequent to a hearing before the Utah Liquor Control Commission, the Commission adopted findings of a violation of Section 16-6-13.1(9), Utah Code Annotated, (unlawful sale to a non-member) and of a violation of Rule A96-01-5:6.a., (use of a club facility by a non-member). The Commission assessed a penalty suspending the club's liquor license for one week.

## NATURE OF RELIEF SOUGHT

Respondent, Utah Liquor Control Commission requests this court to uphold the Commission's Findings and Order of March 7, 1979, which suspends the club's liquor license for a one week period.

## STATEMENT OF FACTS

Petitioner Club Stanyon Street (hereinafter referred to as "Stanyon Street" and "club") is a non-profit corporation organized as a private club under Article I of Title 16, Utah Code Annotated, (Private Club Act) for the purpose of operating a liquor locker club for the benefit of its members. Club Stanyon Street is licensed by the Utah Liquor Control Commission with authority to store, serve, consume and sell liquor.

Pursuant to due notice of violations of the Utah Liquor laws and regulations, a hearing was held on March 7, 1979. Testimony was elicited from an agent of the State Liquor Law Enforcement Division that on November 14 and 22, 1978, the agent entered the club's liquor consumption area and ordered and paid for two drinks (Transcript of March 7, 1979, hearing at pp. 16 and 23). At the hearing the club was represented by its corporate officer and by counsel. The hearing was conducted before four members of the Utah Liquor Control Commission.

After consideration of the facts, circumstances and testimony at the hearing of the matter, the Commission found that there were two violations, a sale to a non-member in violation of Section 16-6-13.1(9), Utah Code Annotated, and an unauthorized use of the club premises by a non-member contrary to Rule A96-01-5:6.a., Utah Liquor Control Commission Regulations. (Transcript of March 7, 1979, hearing at p. 71). The Commission then ordered that the club's liquor license be suspended for one week.

The club now petitions for a review of that order of suspension.

## ARGUMENT

### POINT I

THE RIGHT OF A LIQUOR CLUB LICENSED BY THE STATE TO BE FREE FROM UNREASONABLE SEARCHES WAS NOT VIOLATED BY AN OFFICER OBTAINING LIQUOR DURING REGULAR HOURS.

Petitioner Club Stanyon Street (herein referred to as "Stanyon Street" and "club") as a private liquor club holds a corporate charter and liquor license in the State of Utah. Stanyon Street claims it has a constitutional right to be free from warrantless searches which was violated by officers entering the club and obtaining liquor in an unlawful sale to them as non-members. The club does not deny the sale or ask for suppression of the evidence, or that the violation be overturned, but simply states that the conduct of the

officers violated a right.

The club relies heavily on the Third District Court Memorandum Opinion of Judge Christine M. Durham in the case of V-1 Oil Company, et al. v. Salt Lake City, C-79-75, February 8, 1979. That case dealt strictly with issues arising out of criminal charges in enforcement of food preparation and health inspection ordinances at a local service station. The decision is clearly not applicable to liquor control as is the case at hand. The opinion itself recognizes the distinction:

> Most recently, in the 1979 case of Marshall v. Barlow's, Inc., 98 S.Ct. 1816, the Court applied its holdings in Camara and See to inspections authorized by the Occupational Safety and Health Act of 1970. That opinion distinguishes a parallel line of cases permitting warrantless searches in certain industries which "have such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor over the stock of such an enterprise." 98 S.Ct., at 1821. Liquor and firearms constitute such industries (See the Colonnade Catering Corp. v. United States, 397 U.S. 72, 1970, and United States v. Loarn Anthony Biswell, 406 U.S. 311, 1972), and a recent federal district court decision includes coal mining within that limited class. See Marshall v. Donofris, No. 78-2667, OSHR, Nov. 14, 1978, p. 1175, reported in 47 Law Week 2411. Defendants here [Salt Lake City] argue that food preparation is such a heavily regulated industry, but aside from the base assertion, no facts or historical review is offered to show the kind of regulation and governmental oversight (federal in nature) found in Colonnade and Biswell, supra. V-1 Oil Company v. Salt Lake City, C-79-75, 1979, Memorandum Decision by Christine M. Durham, District Judge (emphasis supplied).

Judge Durham's decision reinforces the fact that liquor is an intensely regulated industry wherein warrantless searches have much broader use and application that in the area of health and safety inspections with which she was dealing.

In addition, the club relies on two cases wherein city ordiances were successfully challenged. But those two cases are clearly different on both the facts and the law.

The Vagabond Club and the Joe Wheeler cases dealt with overly broad city ordinances which purported to allow police to inspect premises unlimited to time and unlimited to business area even to the extent of furnishing a key to the police. In the Vagabond Club the ordinance was specifically unconstitutional because of its provisions, one of which would "compel the clubs to provide a key to the police...". State of Utah v. Salt Lake City, 445 P.2d 691 (1968) at p. 696. In the subsequent Joe Wheeler case the ordinance went too far because it in effect required "...the proprietor to unlock the door at any time from the inside,- all to accomplish the same objective, - a look-see of all the premises", Salt Lake City v. Joe Wheeler, 466 P.2d 838, at p. 840. These cases are clearly not applicable to the matter at hand.

However, the fundamental question here is not whether a warrant was involved, but whether the officers' conduct was reasonable under the circumstances. Respondent submits that the

conduct of the officers in entering the club for the purpose of detecting violations and ordering a drink does not constitute a "search". However, if such conduct on the part of an officer can possibly be classified as a warrantless search or inspection, respondent submits that the conduct was in fact reasonable and therefore not in violation of any right:

> The constitution only prohibits searches that are unreasonable, and the unreasonableness of the search is to be determined from the attendant circumstances. State of Utah v. Rocha, 600 P.2d 543 (1979), a p. 545.

A private club seeking the privilege from the state to deal in intoxicating liquors cannot expect the same protection regarding warrantless searches that can be expected by ordinary business because of the state's greater interest in regulating the use and sale of liquor in order to protect the public welfare:

> There is a great difference in the amount of police regulation permitted where intoxicating liquor is involved as opposed to the ordinary business enterprises. The law is stated 45 Am.Jur.2d, Intoxicating Liquors, as follows:
>
> ...The power of a state to regulate or prohibit the...possession, sale, ...or use of intoxicating liquors is a matter of universal recognition.... [Sec. 23.]
>
> * * *
>
> The state has far broader power and greater latitude to regulate and restrict the use, distribution, or consumption of liquor than to regulate or restrict ordinary business, because of the effect of

the former on the health and welfare of the public. [Sec. 24.]

Pride Club, Inc. v. State, 481 P.2d 669 (1971) at p. 670.

The purpose of the constitutional right is to protect the privacy and security of the individual against unreasonable intrusion by governmental authority. But there are exceptions where a liquor club injects itself voluntarily into the vary area that must be open to pervasive government scrutiny in order to protect the welfare of society. Warrantless inspections of premises have generally been upheld as reasonable in areas of special concern to society such as firearms, drugs or intoxicating liquors.

> Certain industries have such a history of government oversight that no reasonable expectation of privacy...could exist for a proprietor over the stock of such an enterprise. Liquor and firearms are industries of this type; when a entrepreneur embarks upon such a business he has voluntarily choosen to subject himself to a full arsenal of governmental regulation.
>
> * * *
>
> The element that distinguishes these enterprises from ordinary business is a long tradition of close government supervision, of which any person who chooses to enter such a business must already be aware. "A central difference between those cases ...and this one [Barlow's] is that businessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade; whereas the petitioner here [Barlow's] was not engaged in any regulated or licensed business. The businessman in a regulated

> industry in effect consents to the restrictions placed upon him." Almeida - Sanchez v. United States (citation omitted), Marshall v. Barlow's, Inc., 436 U.S. 307, 56 L.Ed.2d 305, 98 S.Ct. 1816 (1979).

Respondent submits that the conduct of the officers was reasonable in the context of the enforcement of liquor law in a closely regulated enterprise. However, if the conduct is considered a search at all it was authorized for any one of several reasons:

First, Utah liquor law expressly authorizes peace officers to enter into club rooms or meeting rooms of clubs in order to determine whether the law is being violated.

> All peace officers shall have the right to enter the club rooms or meeting rooms of social clubs, recreational or athletic associations or kindred associations incorporated under the provisions of this chapter, for the purpose of determining whether any laws or ordinances are being violated therein. Section 16-6-14, Utah Code Annotated.

Second, at the time the license was granted and prior to the entry and sale to the officers, the club gave its express written consent for representatives of law enforcement agencies to enter for inspection purposes and waived its constitutional rights in connection with such inspections. See "Consent to Inspection" by Club Stanyon Street (Appendix A of this brief).

A waiver of constitutional rights even in criminal matters is considered to be a valid action where liquor is concerned:

> ...in a number of cases it has been held that searches for, or seizures of, intoxicating liquor, or evidence of violation of the liquor laws, without a warrant, were justified on the ground of consent to the search or a waiver of constitutional rights. 45 Am.Jur.2d, Intoxicating Liquors, 470.

Where the public has a special interest in strict control of liquor, a consent and waiver has been held valid and reasonable in light of police power of the state to control alcoholic beverages:

> We agree with the Ohio court that one who applies for and is issued a permit to sell alcoholic beverages thereby assents to the reasonable and lawful conditions imposed by statute and rule and find that due to the potentiality of criminal activity in the liquor business there is no constitutional objection to requiring consent to a warrantless search as a prerequisite to the issuance of a liquor license. The State of Illinois could completely prohibit the sale of liquor, but having instead chosen to regulate it, any restriction or requirement such as consent to a warrantless search which is necessary to protect the public health, safety and morals, is a reasonable exercise of the police power of the state. Daley v. Berzanskis, 269 N.E.2d 716 (Ill. 1971) at p. 719. Cert. Denied, 91 S.Ct. 2173.

In the foregoing case, the court concluded that it was incorrect to supress evidence obtained without a valid warrant because "Considering the nature of the business we do not believe that a close scrutiny of the operation of the

business through warrantless searches is unreasonable or arbitrary." Daley v. Berzanskis, supra, at p. 718.

Third, consent of the state to monitor compliance is clearly implicit where the club intends to subject itself to the strict liquor control laws, incorporates as a private club and then applies for and receives a license and posts a bond as required for the "faithful compliance" of all the state liquor laws. Section 16-6-13.1(1), Utah Code Annotated. Moreover, upon establishment of a state store the club officer as vendor of the state store specifically agrees to comply with the law regarding conduct of the state store and the sale of liquor, Section 32-1-37, Utah Code Annotated, as applied to a private club by Section 16-6-13.1(6), Utah Code Annotated.

In summary of Point I, the law is clear that Club Stanyon Street has no right to be free from warrantless searches only to be free from an unreasonable search under the circumstances. The conduct of the officers does not amount to a "search". Nevertheless, what was done was only reasonable under the circumstances of a liquor business so carefully licensed and closely regulated in the public interest.

## POINT II

### A SALE TO A NON-MEMBER IS A VIOLATION OF UTAH LIQUOR LAWS BY THE CLUB.

The club contends that the liquor laws regarding sales apply only to persons purchasing liquor and therefore

the club is relieved from any responsibility for its sales. Respondent disagrees. The transfer by the licensee club to one not a member is the prohibited conduct whether called a "sale" or a "purchase". The applicable law is set forth as follows:

> No person other than a member or guest who holds a valid guest card issued pursuant to subsection 16-6-13.7(13) may make any purchase from a state store located on the premises of a social club, recreational, athletic, or other kindred association. Section 16-6-13.1(9), Utah Code Annotated.

Stanyon Street's contention would warp this law to excuse the club from any responsibility for an unlawful sale. Respondent submits that the purpose of the law is to make a purchase from a club by a non-member a violation by the club for an unlawful sale. The transfer by the club is not authorized, and it is therefore unlawful for both the club and the purchaser.

The rule is found in the list of restrictions clearly applying to the operation by a licensee of a private club. Section 16-6-13.1, Utah Code Annotated. Specifically, the license and bond under which the club conducts its operation are:

> ...conditioned upon the faithful compliance by the non-profit corporation, its officers, agents, and employees with the provisions of this chapter and the Utah Liquor Control Act of 1969.... Section 16-6-13.1(1), Utah Code Annotated.

Also, the law regarding the responsibilities of vendors of state stores is clear. Where a state store is established

in a club, the club itself or an officer or employee of the club is the vendor and is subject to bonding for compliance under the Liquor Control Act, Section 16-6-13.1(6), Utah Code Annotated. This means that the club itself as vendor

> ...shall be responsible for the carrying out of the act and the regulations, so far as they relate to the conduct of such store and the sale of liquor thereat.... Section 32-1-37, Utah Code Annotated.

Moreover, the club as vendor only "...may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations ...", Section 32-1-39, Utah Code Annotated.

Moreover, it is unlawful for anyone to sell liquor except as authorized by law, Section 32-7-1, Utah Code Annotated, and the law especially emphasizes that vendors or their employees cannot sell liquor in any way not expressly authorized by law:

> No person authorized to sell liquor in accordance with the provisions of this act, and no clerk, employee or agent of such person shall sell or furnish liquor in any other place or at any other time or otherwise than as authorized by this act. Section 32-7-4, Utah Code Annotated.

Clearly, taking the liquor law a a whole, with its inter-related provisions, the responsibility is directly upon the club or its officer or employee as the vendor to supervise and restrict the sale of liquor to those sales which are lawful. The club as liquor licensee must be held responsible for a violation.

To summarize Point II, in light of the clear purpose and intent of the law, allowing an unauthorized purchase is a violation by a licensee. Specifically, a licensee selling a drink to (allowing a purchase by) a person other than a member or a guest clearly violates Section 16-6-13.1(9), Utah Code Annotated, for the purposes of an administrative hearing to determine whether a license should be suspended or revoked.

Otherwise, if the club has no responsibility to limit its sales to authorized members and guests only, then sales will be made to anyone, and there would be no effective way to enforce the law. Such a free and open flow of liquor would totally destroy the concept of a private liquor club, a consequence clearly not contemplated by the strict provisions of the Utah liquor laws.

## POINT III

### THE UTAH LIQUOR CONTROL COMMISSION HAS AUTHORITY TO REGULATE AND PROHIBIT UNAUTHORIZED USE OF THE PRIVATE LIQUOR CLUB PREMISES.

Stanyon Street questions the Utah Liquor Control Commission's authority to promulgate paragraph 6.a. of Rule 5, Utah Liquor Comission Regulations:

> No person shall be granted the use of the premises of a locker club except members, guests and visitors.

It is noted that the club does not contest the fact that the club allowed use for a sale to a non-member contrary

to the above rule. The claim is simply that "the Commission has no authority to regulate the activity it seeks to control". (Club's brief at page 14). In other words, the Commission has no power to prohibit persons who are not members, guests or visitors from use of the club premises for purposes of buying, storing and consuming liquor.

Respondent submits that the Commission has full authority under the law to prohibit the use of licensed premises by unauthorized persons. The law is very clear as to just what a "premises" is:

> "Premises" means any room enclosure, building, or structure where alcoholic beverages may be lawfully manufactured, stored, sold, or consumed, and also includes those areas within the boundary of the private locker club. Rule A96-01-1:2.s.

This definition is consistent with the statutory definition of "premises", Section 32-1-3, Utah Code Annotated, as incorporated into the Private Club Act, Section 16-6-12.1 (1), Utah Code Annotated. The use of the premises for purposes of storing, consuming and serving of liquor is unlawful except upon permission of the state through a liquor license, Section 16-6-13.1(4), Utah Code Annotated. The commission's authority to license a premises is the authority to prescribe reasonable conditions for the use of that premises regarding alcoholic beverages. Where the club purports to be private, for the benefit of its own participating members only, a regulation

limiting the use of the premises to members, guests and visitors is reasonable in light of the purpose of the law. If any person, regardless of authority, can use the club premises, then the club ceases to be a private club and becomes essentially open to any of the public who may desire access.

The club contends that it should be free to determine how the premises and facility are to be used so as to permit a person not a member, guest or visitor to play golf or tennis. The argument overlooks the fact that the club's premises is defined by the club itself in its application for permission to sell, store, serve and consume liquor on a particular "premises". The club initally controls the extent of the premises defined exclusively for private members and voluntarily subjects that premises to state regulation in the first place.

Allowing free and open usage is directly contrary to the legislative intent to exclude the general public. Applicants for membership in a club are prohibited from admittance to the premises until they have been voted on and approved by the members of the club, and until seven days after application for membership, Section 16-6-13.7(2), Utah Code Annotated. Also, non-member guests may not use the premises unless they have been duly authorized by a member, Section 16-6-13.7(10), Utah Code Annotated. If the law contains such provisions to prohibit unauthorized persons from use of the premises, then

how can the Commission lack authority to enforce those provisions as the club contends? Respondent submits that the law is clearly intended to make the private club actually private, and to allow use by any person without authority would frustrate that purpose in the law.

Moreover, the Commission has express power to make a regulation

> ...governing the conduct, management and equipment of any premises upon which alcoholic beverages may be sold or consumed. Section 32-1-8(r), Utah Code Annotated.

Respondent submits that when the law is viewed from the perspective of a private, non-profit club "organized primarily for the benefit of its members", Section 16-6-12.1(2), Utah Code Annotated, a regulation prohibiting the use of the premises and prohibiting access by persons having no authority by law or by official club permission is a reasonable exercise of the Commission's authority. Otherwise, the club becomes open to the public and the concept of a private club, devoted exclusively to the use and benefit of tis members, becomes meaningless. Stanyon Street in its argument refers to the remarks of one of the Commissioners as a basis for alleging that there exists a Commission policy of non-enforcement of Rule 5:6.a. The clubs argument begs the question: If there were a policy of non-enforcement by the Commission, then there would be no violation in this case and no appeal. Contrary

to the club's argument, the personal opinion of one Commissioner alone cannot be taken as a policy set by the whole Commission. The rule in on the books, it is valid, it was enforced in this case, a violation was found, and the Commission voted for suspension. The rule and the penalty should be upheld.

## POINT IV

### THE INTENT OF THE LICENSEE TO VIOLATE THE LIQUOR LAWS IS NOT A NECESSARY ELEMENT IN PROCEEDINGS BEFORE THE LIQUOR CONTROL COMMISSION.

A hearing before the Liquor Commission is an administrative proceeding to determine whether the liquor laws have been violated and which does not require that intent or knowledge be found on the part of the licensee in order to conclude that there was a violation of the liquor laws or to assess a suspension or revocation of the license. The proceedings are not criminal in nature and the standards of the criminal law do not apply. The general rule of law is that:

> A liquor license may be revoked for the making of unlawful sales or other violations of the liquor laws by employee or agents of the licensee without the latters knowledge and contrary to his instructions. Thus, a liquor license may be revoked where employees of the licensee solicit patrons to buy them drinks, or permit others to do so, in violation of the liquor laws, even though such acts of solicitation are done without the knowledge of the licensee. 45 Am.Jur.2d, Intoxicating Liquors, Section 188.

The club does not deny the sale of liquor but attempts to explain the sales away in that "Each of the alleged incidents

occurred because of simple human error or oversight". (Club's brief, p. 18). The licensee is responsible for that oversight. There was in fact a violation even though the licensee may not have had knowledge of that violation. Surely the question of intent is a material issue to an individual defending a criminal charge which might result in incarceration; but here we are not dealing with the criminal law or a defendant but rather with a licensee and a potential revocation of his privilege to deal with liquor. In this area the intent of the licensee is not an essential element nor is lack of intent clearly designated in the law as an absolute defense. The true question is whether the record supports the findings of a violation and the order of suspension. The record is clear and the order should be upheld.

## POINT V

### THE COMMISSION'S PROCEDURE FOR NOTICE AND HEARING DID NOT VIOLATE DUE PROCESS OF LAW; THE CLUB IS NOT ENTITLED TO FULL CIVIL DISCOVERY NOR TO A PRE-HEARING VISUAL INSPECTION OF THE ENFORCEMENT OFFICERS.

Due process for an administrative hearing requires that a licensee be given notice of the allegations of the violation and an opportunity to be heard on those allegations at a fair hearing and an opportunity to be represented by counsel at the time of the hearing. These requirements were fulfilled in this case as is adequately demonstrated by the

record. Thus, the club's right to due process before the administrative body was protected within the law.

Contrary to the club's argument, the requirement of the Commission's regulations is not for discovery but simply for a notice in clear language which adequately describes the acts of the licensee in violation of the law:

> If the hearing is directed towards a respondent, [the Commission] shall serve on the respondent an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged or the issues to be determined at the hearing, to the end that the respondent will be able to prepare his or its defense. Utah Liquor Control Commission Rules of Procedures, Rule 8(1)(a). (Emphasis supplied.)

It is the language of the "notice" which must be clear. There is no requirement for general open discovery, as the club implies, to prepare a defense (Club's brief, p.22).

The club claims a right to a visual inspection of agents and to Answers to Interrogatories. However, the club's brief cites no authority for such a proposition, and indeed there is no authority because there is no right of discovery in administrative hearings unless that right is established by some legislative or regulatory authority. Any discovery allowed in proceedings before the Liquor Control Commission is limited to the taking of depositions, Rule 8(14)(a), Utah Liquor Control Commission Rules of Procedure, which were not asked for.

Due process does require that certain fundamental procedures be available to a licensee. Those required procedures were in fact satisfied in this case by the notice and hearing where Stanyon Street had ample opportunity to get and give appropriate information before the Liquor Commission by testimony and cross-examination. More than this is not required. Pride Club v. Miller, 572 P.2d 385 (1977). Nowhere has due process ever included a right to a pre-hearing "visual inspection" of the liquor law enforcement officers simply for the convenience of the club. Not even in a prosecution pursuant to the more exacting standards of criminal procedure would a defendant have such a right, much less a licensee involved in an administrative hearing which results in suspension or revocation of a license.

## CONCLUSION

It is generally recognized in liquor matters that the State has direct authority to protect the welfare of its citizens in its own wisdom by licensed privilege or even by absolute prohibition if desired.

United States Constitution
Amendment XXI

> Section 1. The 18th article of amendment to the constitution of the United States is hereby repealed.
>
> Section 2. The transportation or importation into any State, Territory or possession

> of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
>
> Section 3. [omitted].

The 21st Amendment did more than merely repeal the 18th Amendment. The 21st Amendment allowed to the states the exclusive control of liquor subject only to overriding national concerns and constitutional protections:

> Section 2 constitutionalized an exception to the normal operation of the commerce clause [citation omitted]. [Section 2] is unique in the constitutional scheme in that it represents the only express grant of power to the states thereby creating a fundamental restructuring of the constitutional scheme as it relates to one product - intoxicating liquors. Castlewood International Corporation v. Simon, 596 F.2d 638, (5th Cir. 1979) at p. 642.

With that grant of power Utah has chosen to extend the privilege of possessing, selling and consuming liquor by license while maintaining strict control over the storage, serving, consumption and sale of liquor subject only to the requirements of a constitutional and reasonable regulatory procedure.

In the matter before the Court, the rights of the private club, Stanyon Street, were adequately protected. The privilege to deal with liquor was requested by the club and extended by a state license. Violations in fact did occur. The club was given notice of the violations and evidence was introduced at a hearing where the club had ample opportunity

to ask questions of the witnesses and introduce its own testimony. A violation of the law was found and a penalty was assessed. A correct and fair course of proceedings was followed which resulted in a moderate suspension of the club's liquor license for one week.

If any of the club's business or operation was restricted at all, it was because of the nature of the chosen business. Club Stanyon Street voluntarily subjected itself to a stricter control and scrutiny than any ordinary business by its own free entry into the private liquor club business. Merely because the enforcement officers' conduct was undercover, or because their identity was not revealed before the hearing, or because the club's officers had no knowledge of the violation at the time it occurred does not impair any of the club's constitutional rights regarding their liquor license. What rights the club actually has were not violated by the conduct of the officers or by the proceedings before the Commission.

The proceedings were fair, and the order was reasonable. At all times the Commission acted within lawful authority and the record will show that the Commission was not arbitrary or capricious. Respondent respectfully asks that this Court uphold its order for suspension of the club's liquor license for a one week period.

Respectfully submitted

ROBERT B. HANSEN
Attorney General

JOHN S. McALLISTER
Assistant Attorney General

Attorneys for Respondent

CONSENT TO INSPECTION APPENDIX A

The undersigned, a non-profit corporation of the State of Utah, having applied to the Utah Liquor Control Commission for a license to maintain club premises upon which liquor is or will be stored or consumed as provided in the Liquor Control Act of 1969 and the provisions of Chapter 6, Title 16, U.C.A. (1953), as amended, does hereby voluntarily consent and agree that representatives of the Commission, the Citizens Council, the Liquor Division and law enforcement agencies may and shall be admitted immediately to the club house and permitted without hindrance or delay to inspect completely the entire club house, club quarters, all books and records of said corporation and any locker therein while the club is open for the transaction of business to its members, or while members or guests are present.

The foregoing consent by the undersigned shall become effective as of July 13, 1969, and shall not be withdrawn while the undersigned is licensed by the commission to operate as a liquor Locker Club or while an application for such license is pending. The undersigned agrees that it will not object to the use of evidence obtained pursuant to his consent, whether at a commission hearing or in civil or criminal proceedings before the courts or otherwise, when used in connection with the enforcement of the liquor laws of the State of Utah, it being understood that the undersigned hereby voluntarily waives whatever constitutional rights it may have had or might have in the future in connection with the foregoing.

Dated this 15 day of Oct. 19 71.

Club Stanyon Street
Non-profit Corporation

Attest

Secretary

By: Donald B. McGivney
Title of Officer Trustee

STATE OF UTAH

COUNTY OF Salt Lake

On the 15th day of October 19 71, personally appeared before me Donald B. McGivney and Jo Juliano who each being duly sworn did say, each for himself, that he the said Donald B. McGivney, is ~~the~~ a Trustee (officer) and he the said Jo Juliano is the secretary of Club Stanyon Street (corporation) and that said officers know and understand the statements made herein and that their execution thereof is done voluntarily and without coercion of any kind and is done by authorization of the Board of Directors (Trustees) of said corporation and that said officers acknowledged to me that the corporation executed the same.

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief of Respondent, postage prepaid, to G. Blaine Davis, MORGAN, SCALLEY & DAVIS, Attorneys for Petitioner, at 261 East Third South, Salt Lake City, Utah, 84111, on this the 28th day of March, 1980.