

(605) 721-7665 tel
(605) 721-7619 direct
(605) 721-7673 fax

201 MAIN STREET, STE. 204
PO BOX 169
RAPID CITY, SD 57709-0169
www.wesolicklaw.com

Writer's e-mail:
sjwesolick@gmail.com
(866) 790-6111 toll free

November 8, 2013

Mr. Joel Landeen
Rapid City Attorney
300 Sixth Street
Rapid City, SD 57701

*Via E-Mail
and Hand Delivery (11/12/13)*

Re: *AOB Licenses of A J, Inc. and Aaron M. Johnson*

Dear Joel,

Please be advised that I have been retained by A J, Inc. and its principal, Aaron M. Johnson, to respond to your correspondence dated October 30, 2013. I ask that you direct all further communications to my attention.

In your correspondence, you state that my clients should submit their "appeal" to your attention by 4:00 p.m. on November 12, 2013, to "stay" the suspension of the AOB licenses. This letter is written for that purpose.

We are acting in accordance with the directions given in your correspondence in submitting this "appeal". We are doing so without waiver of any of my clients' rights to pursue other necessary and appropriate avenues, including litigation in state or federal court. My clients expressly reserve all such rights.

It is my opinion that the City's ordinance concerning license suspension/revocation, along with your notice of suspension, is an unconstitutional prior restraint of their First Amendment expressive speech rights. Further, we believe that the grounds asserted for any suspension determination are wholly without merit.

You indicate that the suspension will be "stayed" pending review by the Common Council. In that regard, the following requests are made:

1. Please notify me immediately upon the scheduling of any hearing or meeting by the Common Council or any of its committees that may be convened to review this matter.
2. We insist that a full and complete hearing or meeting be scheduled to afford us the opportunity to examine or cross-examine witnesses, present our position, and receive and review all documentary or other evidence that may be presented. This is necessary to make a proper and complete record of this review hearing or meeting for any subsequent legal proceedings in a court of competent jurisdiction. We assert that simply being given a three-minute "public comments" opportunity fails to meet the due process requirements in this matter.

3. To afford us the opportunity to prepare, please: a) identify all witnesses who are expected to present comments or testimony; b) identify and present at the hearing all persons involved in the reported incidents (including undercover and compliance officers); and c) provide to me in advance all documents, reports, e-mails, notes, photographs, images, visual or audio recordings, and other documentation that refer or relate to the City's contention that AOB violations occurred and/or that my clients knowingly allowed such violations to occur (referred to as "scienter" in the ordinance).

4. Please provide all reports or submissions by undercover and compliance officers of their expenditures/expenses incurred in their compliance activity, such that it can be determined how many visits to the establishment occurred, and how many alcoholic beverages, couch dances, and the like were paid for.

5. It is our request that the "stay" you reference in your correspondence be extended to maintain the status quo (e.g., continued activities under the AOB) pending a prompt judicial review, not just administrative review by the Common Council.

The City's failure to comply with these requests, I believe, will be further grounds for judicial review and action on behalf of my clients.

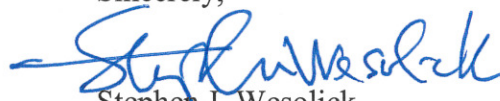
On a side note, I am authorized by my clients to notify the City of their intentions to install privacy fencing at a location outside the premises where individuals will be invited to smoke. Our hope is that the City will view this as a sufficient response to Chief Allendar's correspondence of July 15, 2013, in which he appealed to my clients to take some action to limit the ability of passersby to view the dancers having their smoke breaks outside (which is necessitated by the smoking ban).

My clients and I are willing to engage in a conversation with you, Chief Allendar, Mayor Kooiker, or other representatives to find some common ground before the situation spirals toward litigation. You should not, however, underestimate my clients' determination to protect their financial and business interests in this regard. If litigation is necessitated in this matter then my clients will seek recovery of their costs and legal fees against the City.

Feel free to contact me at your convenience to discuss this matter in further detail. If anything more is required of my clients to maintain the status quo pending prompt administrative (or judicial) review, as directed in your correspondence, then please let me know what that might be.

Thank you for your professional courtesies.

Sincerely,


Stephen J. Wesolick

c: Client