

MINUTES

**HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE  
LUKER SUBCOMMITTEE**

**DATE:** Thursday, February 09, 2012

**TIME:** Upon Adjournment of the Full Committee Meeting

**PLACE:** Room EW42

**MEMBERS:** Representatives Luker, Nielsen, Shirley, Ellsworth, Jaquet, Killen

**ABSENT/  
EXCUSED:** None.

**GUESTS:** Jared Tatro, Office of Performance Evaluations (OPE); Jeremy Pisca, Idaho Beer & Wine Distribution Association; Mike Kane, Idaho Sheriff's Association (ISA); Tyler Mallard, Office of the Governor; Ronaldo A. Coulter, Hispanic Cultural Commission; Greg Marchant, Knitting Factory Entertainment; Dennis Stevenson, Dept. of Administration; Lt. Bob Clements & Col. Jerry Russell, Idaho State Police

**Chairman Luker** called the meeting to order at 3:15 p.m.

**DOCKET NO.  
11-0501-1101:** **Lt. Bob Clements** presented a brief summary of **Docket No. 11-0501-1101** as the docket had already been presented in previous meetings. He then stood for questions. In regards to the definition of "multi-purpose arena," committee members voiced a concern that this definition will threaten businesses in small, rural communities, if required to comply. Lt. Clements explained the process in greater detail: under Idaho Code § 33-21 minors are restricted from entering or remaining in certain places such as "taverns, bars, and cocktail lounges." However, there is an exception that allows a minor to be present in a bar/restaurant where the minor is excluded from the bar portion of the restaurant. A venue, with a bar, that does not qualify as a "restaurant" may apply for a multi-purpose permit that would allow minors admittance for an all age event if no alcohol is available. The descriptions within the rule, such as a bachelor's party or a heavy-metal concert, exist because these events could draw a different crowd requiring increased security and special planning may be needed. Ultimately, this rule opens up a chance for minors to be in a place where they would otherwise be prevented from entering.

In response to committee questions, **Lt. Clements** stated that a minor may be in a restaurant that also contains a bar but the minor may not sit in the bar area. In the case where the restaurant is one large room, the bar area would need to have a sign posted indicating no minors are allowed in the bar area.

**Lt. Clements** next explained the application of the rule in regards to privately owned club facilities versus a larger establishment, such as the Knitting Factory in Boise. He stated that the distinction is whether the facility is licensed by ABC. If they are, then the rule applies to that facility. Non-licensed facilities would apply for a catering permit for one event and in this case, minors would not be restricted.

In regards to the wording in § 04 (a)(iii)(c), **Lt. Clements** explained the rule is worded in this way in order to establish a baseline that the party applying for the permit is serving food, and it is not just a drinking establishment. A committee member commented that as the rule reads, the applying party must serve only one of the food items on the list to qualify for the permit. Lt. Clements stated that he doesn't know exactly where the verbiage for the rule originated from but the intent was not to limit food items served.

The committee questioned the "plan requirements" in § 04 (a)(iii)(d) and the five elements required to receive the multi-purpose endorsement. **Lt. Clements** explained that the type of event will dictate the clientele and needed security. If the applicant is a small operator, with a limited number of events, the entire plan will be evaluated in light of the type of events that operator is having, as well as by the events they are not having. He explained further that if a small operator hosted a limited variety of events, it would be possible for that party to send in a plan for the entire year, provided the plan for each month remained the same. What that party would be doing in actuality is submitting a plan for each month, all at one time, and if there were to be a change in events, that party could change the event with 24-hour notice to law enforcement.

In the case where an establishment such as the Hispanic Cultural Center, who doesn't qualify as a restaurant/bar but wishes to serve alcohol and also have minors in attendance, would need to have signs posted to keep the minors and alcohol separate. **Lt. Clements** explained that as it stands now, the Hispanic Cultural Center has to post "no minors" signs. This rule opens up the opportunity to have special events for all ages. He also noted that the Hispanic Commission knows about their violation and is interested in applying for multi-purpose endorsement qualification/permit. He explained that the Hispanic Commission and the Knitting Factory have been operating as "over/under" establishments for a long time, and want to have a legal way to have events/concerts where minors can be included.

Committee members clarified that the rule requires the licensee to submit a plan with types of activities they anticipate having, plus other criteria in the plan. Then each month all planned events must be submitted, with a 24 hour proviso allowing changes along the way.

**Lt. Clements** confirmed. The committee was also concerned with subpart 3 under § 04 (a)(iii)(d) and **Lt. Clements** explained that the "training provided" requirement is a cooperative agreement between the licensee, ABC and local law enforcement. The committee was still concerned about vagueness of the requirement and the likelihood that the best negotiator would receive the best deal.

**Tyler Mallard**, representing the Office of the Governor, stated that the Governor supports the rule as written but would be flexible on the verbiage.

**Ronaldo A. Coulter**, an attorney representing the Hispanic Cultural Center, said he met with **Lt. Clements** about **Docket No. 11-0501-1101** and found that it was too ambiguous, especially in regards to the foods listed in § 04 (a)(iii)(c) because the Hispanic Cultural Center would not likely be serving any of the listed foods which could, according to the language in the rule, result in denial of a permit. He then stated that the rule helps the Center because it allows them to serve alcohol at family functions and weddings. However, stated that the rules should be written in a way where those that are applying can understand the process.

**Greg Marchant**, representing the chief operating office at Knitting Factory Entertainment, explained he has been working with ISP for 5 years to try and come up with rules to apply to the Knitting Factory. He stated that he views the rule as a proactive way to define where the Knitting Factory fits in and would like to maintain their record of compliance.

The committee members discussed the options with the rule: they can either accept, reject, or accept with rejections of certain subsections. Then a concurrent resolution will be prepared reflecting the committee's decision. If the committee were to accept the rule, ABC could handle these various concerns in the preparation of the pending rules to come.

**Dennis Stevenson**, the Rules Coordinator for the Dept. of Administration, stated that this is a temporary rule. Next, the rule will be published as a pending rule and will go before the committee next year. Changes can be made before that time based on the "logical outgrowth" from application of the rule. If/when the rule is published as a proposed rule then that rule must be published in the administrative bulletin, if not, the agency can publish the rule with the changes that have been suggested throughout these committee meetings. If the rule were rejected, it would be finished. The other option is to rescind the rule, then ABC could return with another temporary rule that includes all the changes subject to approval next year. If this temporary rule is approved then it will be in effect until the next legislative session.

- MOTION:** **Rep. Shirley** made a motion to recommend acceptance of **Docket No. 11-0501-1101** with the stipulation/addendum that those who have expressed concern submit those changes to the rulemakers and ask them to incorporate those changes for the next legislative session. **Rep. Luker** stated that this motion was out of order. **Rep. Shirley** instead made a motion to recommend acceptance of **Docket No. 11-0501-1101** .
- SUBSTITUTE MOTION:** **Rep. Nielsen** made a substitute motion to reject **Docket No. 11-0501-1101**. In support of the motion, **Rep. Ellsworth** said that she wants to do it right from the beginning. **Mr. Stevenson** clarified that there is not enough time left in this legislative session to see the rule again and that the rule has been in effect since July 2011. In opposition to the substitute motion, **Rep. Jaquet** said that the rule is needed to protect minors and will support the rule with the idea that those involved in promulgating the rule will sit down and address the rule's weaknesses.
- VOTE ON THE SUBSTITUTE MOTION:** **Chairman Luker** called for a vote on the substitute motion to reject **Docket No. 11-0501-1101**.
- ROLL CALL VOTE ON THE SUBSTITUTE MOTION:** **Rep. Nielsen** requested a roll call vote on the substitute motion to reject **Docket No. 11-0501-1101**. **Motion failed by a vote of 2 AYE, 4 NAY. Voting in favor** of the motion: **Reps. Ellsworth and Nielsen**. **Voting in opposition** to the motion: **Chairman Luker and Reps. Shirley, Jaquet and Killen**.
- VOTE ON ORIGINAL MOTION:** **Chairman Luker** called for a vote on the original motion to approve **Docket No. 11-0501-1101**. **Motion carried by voice vote**. The rule will be recommended to the full committee for approval.
- ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:11 p.m.

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Representative Lynn Luker  
Chair

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Stephanie Nemore  
Secretary