

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

DOWNTOWN BAR AND GRILL, LLC,)

Plaintiff,)

v.)

Case No. 10-C-822

STATE OF KANSAS,)

Defendant.)

AFFIDAVIT OF PATRICK MARTIN

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

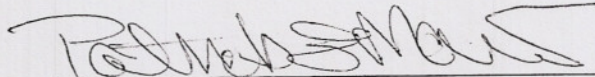
I, Patrick Martin, of lawful age, being duly sworn on my oath, state as follows:

1. I am the interim executive director of the Kansas Racing & Gaming Commission.
2. The State of Kansas has an ownership interest in casinos located in Kansas.

Currently, only one such casino exists. It is the Boot Hill Casino and Resort located in Dodge City, Kansas. No other casinos will be operating prior to the end of this calendar year.

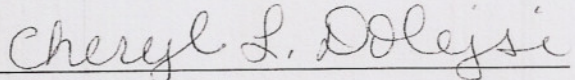
3. Pursuant to K.S.A. 74-8734(h)(12), the State receives "not less than 22% of lottery gaming facility revenues." For the year 2010, the State's ownership interest in the Boot Hill Casino and Resort has resulted in year-to-date deposits of \$3,508,932.67 to the State General Fund. By comparison, during the same time period, the bingo tax has only generated \$424,677 in fees.

FURTHER AFFIANT SAITH NAUGHT.



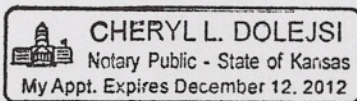
Patrick Martin

Subscribed and sworn to before me on June 25, 2010.



Notary Public

My appointment expires:



IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

DOWNTOWN BAR AND GRILL, LLC,)
)
Plaintiff,)
)
v.)
)
STATE OF KANSAS,)
)
Defendant.)

Case No. 10-C-822

AFFIDAVIT OF SARAH BYRNE

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

I, Sarah Byrne, of lawful age, being duly sworn on my oath, state as follows:

1. I am an assistant attorney general, assigned as legal counsel to the Alcoholic Beverage Control ("ABC") division of the Kansas Department of Revenue.
2. The ABC is charged with regulating the liquor industry, including the issuance of licenses to trade in alcoholic liquors, and strictly enforcing the provisions of the liquor control act, K.S.A. 41-101, *et seq.* and the club and drinking establishment act, K.S.A. 41-2601, *et seq.*
3. Liquor licenses that authorize the sale and service of liquor by the drink for on-premise consumption are: class A club; class B club; drinking establishment; and caterer.
4. Class A clubs are defined as "nonprofit social, fraternal or war veterans' clubs...for the exclusive use of the... [members] and their families and guests accompanying them." K.S.A. 41-2601(e). Class A clubs include Veterans of Foreign Wars posts, American

Legion posts, fraternal organizations such as Order of the Eagles, and country clubs. Class A clubs generally have charters that establish requirements for membership in the organization.

5. K.S.A. 41-2637 and K.A.R. 14-19-21 restrict access to club services at a class A club to members and their families and guests accompanying them.

6. Class B clubs are defined as “premises operated for profit ...to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.”

K.S.A. 41-2601(f). Membership in a class B club is allowed pursuant to K.S.A. 41-2641.

7. K.S.A. 41-2641(c) requires that an applicant for permanent membership in a class B club must pay an annual membership fee of at least \$10, be screened by the club for good moral character, and wait for a period of ten days after submitting the application.

8. K.S.A. 41-2641 and K.A.R. 14-20-21 restrict access to club services at a class B club to members and guests accompanying them.

9. Drinking establishments are open to the general public and access is not restricted to members and guests of members.

10. On June 23, 2010, there were a total of 2,286 on-premise liquor licenses active in Kansas: 295 class A club licenses; 127 class B club licenses; 1,814 drinking establishment licenses; and 50 caterer's licenses.

11. Twenty-eight (28) of the class B clubs currently licensed did not hold a license as a class A or class B club as of January 1, 2009.

12. Three (3) of the class A clubs currently licensed did not hold a license as a class A or class B club as of January 1, 2009.

13. Petitioner Downtown Bar & Grill, LLC held a drinking establishment license, #10-007-1019-06, from May 4, 2007 until May 3, 2009.

14. On April 28, 2009, Plaintiff Downtown Bar & Grill, LLC applied for a class B club license, #09-007-1044-06, which was issued on May 4, 2009 and renewed on May 3, 2010.

15. With respect to the class B clubs cited by Kevin Haislip in his affidavit, as of June 24, 2010, only three of the clubs he listed have applied for and been granted an exemption from the smoking ban. The three clubs are Tom's Country Stampede in Leavenworth, Chatterbox in Lansing, and Fred's Place in Perry. The other clubs are not exempted from the ban. One of the clubs, No Name Tavern in Leavenworth, is ineligible for an exemption because it was not licensed as a club on or before January 1, 2009. As of June 24, 2010, the other clubs named by Mr. Haislip have not requested an exemption from the smoking ban. Those clubs include the following:

- Fathead's Irish Pub (Leavenworth);
- Benny's (Leavenworth);
- Our Place (Leavenworth);
- Beer Thirty (Desoto);
- Silver Wheel Tavern (Desoto);
- Stinky's Other Side (Oskaloosa); and
- Paradise Saloon (Lawrence).

16. With respect to the class B clubs cited by Gary Turner in his affidavit on behalf of Cattlemen's Lounge: as of June 24, 2009, of the clubs named by the affiant, the following Dodge City clubs have not requested an exemption:

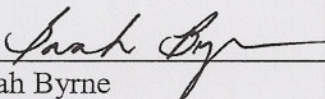
- El Caporal Nightclub;
- El Coyote Disco;
- El Torino's Club;
- Last Pocket; and
- Doctor's Office.

17. With respect to the class B clubs cited by Darty Saunders in her affidavit on behalf of Bill's 32 West: as of June 24, 2009, of the clubs named by the affiant, the following have not requested an exemption:

C & R (Kansas City);
Bubble Room (Kansas City);
Double T's Roadhouse (Kansas City); and
River Road Inn (Bonner Springs).

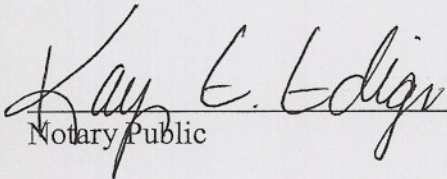
18. As ABC and KDHE interpret the clean indoor air act, effective July 1, 2010, any class A or class B club that is ineligible for an exemption, or which has failed to request an exemption from the KDHE must prohibit smoking in accordance with the act. Eligible class A or class B clubs may request an exemption between July 1, 2010 and September 28, 2010, but may not allow smoking in the club until the request is approved by the KDHE.

FURTHER AFFIANT SAITH NAUGHT.



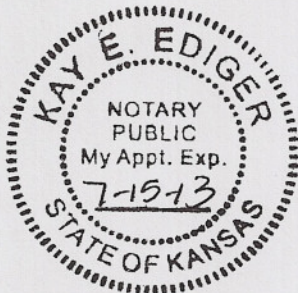
Sarah Byrne

Subscribed and sworn to before me on June 25, 2010.



Notary Public

My appointment expires:



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DIVISION 7**

DOWNTOWN BAR AND GRILL, LLC,)

Plaintiff,)

v.)

Case No. 10-C-822

STATE OF KANSAS,)

Defendant.)

AFFIDAVIT OF EDUARDO RAMIREZ

STATE OF KANSAS)

COUNTY OF SHAWNEE) ss

I, Eduardo Ramirez, of lawful age, being first duly sworn, on oath, do hereby state the following:

1. I have personal knowledge of the matters stated herein.
2. I currently co-own and operate Cousins Club, which is a drinking establishment located at 1211 S. Kansas Avenue in Topeka, Kansas.
3. As of July 1, 2009, I voluntarily prohibited smoking in my bar. At that time, and to the best of my knowledge, my bar was not subject to any government-created smoking restrictions or bans.
4. As of July 1, 2009, I was actively competing with bars and clubs that continued to allow their customers to smoke.
5. I feared that going smoke free would result in a decrease in revenue for my bar because many of my customers said they would no longer come to my bar if I prohibited smoking. Customers specifically told me they would frequent other bars or clubs where smoking is allowed instead of coming to my bar.
6. Notwithstanding my customers' threats to leave, I have not noticed a decrease in the number of customers who come to my bar, and I have not experienced any decrease in

revenue since voluntarily going smoke free. Instead of going to other bars and clubs where they can still smoke, my customers have stayed with me. They simply step outside to smoke instead of lighting up inside the bar.

FURTHER AFFIANT SAITH NOT.

Eduardo Ramirez
Eduardo Ramirez

Subscribed and sworn to before me on this 24th day of June, 2010.

Donna R. Wells
Notary Public

My Commission Expires:

November 20, 2013

