

THE ORNE BROTHERS, INC.

v.

CITY OF PORTLAND et al.

Submitted on Briefs February 28, 2008

Decided March 13, 2008

Panel: CLIFFORD, ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

The Orne Brothers, Inc., owner of the Ice House Tavern, appeals from a judgment entered in the Superior Court (Cumberland County, *Crowley, J.*) denying its M.R. Civ. P. 80B complaint and affirming the Portland City Clerk's denial of its applications to renew its food service license, non-mechanical pool table license, and mechanical amusement devices license. This case is properly before this Court on appeal. *See Nugent v. Town of Camden*, 1998 ME 92, ¶ 6, 710 A.2d 245, 247; *Campaign for Sensible Transp. v. Me. Turnpike Auth.*, 658 A.2d 213, 215 (Me. 1995) (identifying issues capable of repetition, yet evading review because of their "fleeting or determinate nature," as an exception to the mootness doctrine).

Contrary to the argument by The Orne Brothers, Inc., the Portland City Code is not unconstitutional on its face or as applied here, *see* Portland Me., Code §§ 15-8(b), 15-9 (2006); *see also* *Kovack v. Licensing Bd., City of Waterville*, 157 Me. 411, 420-21, 173 A.2d 554, 558-59 (1961), nor is the City Code violative of State law or preempted by State law, *see* 30-A M.R.S. §§ 3001, 3811 (2007); *see also* *Ullis v. Inhabitants of the Town of Boothbay Harbor*, 459 A.2d 153, 159-60 (Me. 1983) (distinguishing between sections that have a direct and indirect impact on liquor sales, and permitting those with an indirect effect). Furthermore, contrary to the assertions of The Orne Brothers, Inc., the hearings were properly before the City Clerk and the appellate hearing officer, appointed by the City Manager, *see* Portland Me., Code §§ 15-4(a), 15-9; public notice was not required and, because the appellants received notice, any errors in notice were harmless, *see* Portland Me., Code § 15-10(c); there was sufficient evidence on the record to provide a legal basis for denying relicensure, and the penalty was proportionate to the violations, *see* Portland Me., Code §§ 15-3, 15-4, 15-8, 15-9. Additionally, it was not an abuse of discretion for the appellate hearing officer to deny The Orne Brothers, Inc.'s request for a continuance and its request for an evidentiary hearing. *See* Portland Me., Code § 15-9; *see also* *Christensen-Towne v. Dorey*, 2002 ME 121, ¶ 8, 802 A.2d 1010, 1012.

The entry is:

Judgment affirmed.

Attorney for The Orne Brothers, Inc.:

David Turetsky, Esq.
477 Congress Street Suite 400
Portland, Maine 04101

Attorney for the City of Portland:

Gary C. Wood, Esq.
City of Portland
Office of Corporation Counsel
389 Congress Street
Portland, Maine 04101