

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:	)	
	)	
PUB LINE LLC	)	OAH No. 09-0217-ABC
_____	)	Board Case No. 09-05

**DECISION**

**I. Introduction**

Pub Line LLC, a company wholly owned by Fairbanks resident Tylan Martin, applied on December 1, 2008 for a common carrier dispensary license. Pub Line is an existing business that has operated a bus route between various bars, the Fort Wainwright gate, the University of Alaska, and other locations in and near Fairbanks. It seeks authorization to operate a tended bar on its bus, which would improve the financial viability of the service.

The City of Fairbanks submitted an objection to the application under AS 04.11.070 (since the proposed bar was not a fixed facility to be located in the city, the city was acting as a “person” rather than as a local government). The Alcoholic Beverage Control (ABC) Board initially considered the application on February 24, 2009, and voted 4-1 to deny it. As provided in AS 04.11.510(b), the Director of the ABC Board offered Mr. Martin an informal conference to discuss the matter with the board or with her. Mr. Martin elected not to pursue that option and instead immediately requested a formal hearing.

The Office of Administrative Hearings conducted a formal hearing in Fairbanks on June 26, 2009. Mr. Martin, firefighter/paramedic Shane Powers, and Pub Line user Andrew L. Foley testified in support of the application. Fairbanks Mayor Terry Strle, Fairbanks Police Chief Laren Zager, and local Mothers Against Drunk Driving Chapter President Daniel Eagan testified at the behest of the ABC Board staff. City Attorney Herbert Kuss gave a non-testimonial statement on certain legal issues as an “interested person,” as permitted by AS 04.11.510(b)(1). No exhibits were taken into evidence beyond the Agency Record submitted in advance of the hearing and incorporated in the case file.

As explained below, the applicant has an innovative idea that may not be entirely without merit. However, Pub Line has not carried its burden of demonstrating that the license sought is not contrary to the best interests of the public.

## **II. Facts**

### *A. Nature of Proposal*

Pub Line leases a single converted school bus.<sup>1</sup> From September of 2008 until May of 2009, it operated a scheduled evening shuttle service with stops at eight or nine Fairbanks area bars, the university campus, and the Fort Wainwright gate. On late runs, the shuttle would take patrons to their homes on request, within a reasonable radius. Tickets cost five dollars for a single trip or fifteen dollars for a full night of access to the shuttle. The marketing strategy behind the service is to provide customers with an affordable means to visit multiple bars and to get home without being concerned about impaired driving. Pub Line has been advertised as “the fun and safe way to party.”<sup>2</sup>

The Pub Line bus operated with a single driver and no other staff. Initially, alcohol was not allowed on board, but in the last months of operation customers were permitted to bring alcohol on board if they wished<sup>3</sup> (all participants in the hearing agreed that this was permissible under the law). There is no evidence that the Pub Line has caused any disturbances requiring intervention of law enforcement or emergency personnel.<sup>4</sup>

The Pub Line service has struggled financially and has proved unprofitable in its current format. The biggest complaint from customers has been the long wait between stops. For patrons who want to continue ordering drinks, it is much quicker to drive their own vehicle or take a cab to the next bar. The application now before the board is Pub Line’s proposed solution to that problem.<sup>5</sup>

Pub Line proposes to refit the bus with a bar.<sup>6</sup> The bar would be staffed with a TAM-certified bartender.<sup>7</sup> Customers would be able to order drinks to consume on the bus. The bus

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<sup>1</sup> Agency Record (A.R.) 17-22.

<sup>2</sup> A.R. 52-53; direct testimony of Martin.

<sup>3</sup> Direct testimony of Martin and Foley.

<sup>4</sup> ALJ exam of Martin; lack of testimony from those opposing application.

<sup>5</sup> Direct testimony of Martin.

<sup>6</sup> A.R. 24 shows the proposed configuration.

<sup>7</sup> Direct testimony of Martin. TAM stands for Techniques of Alcohol Management.

would have tinted windows so that the interior would not be easily visible to outsiders.<sup>8</sup> The driver would be screened from patrons by a partition.<sup>9</sup>

The parties and witnesses appeared to agree that the Pub Line business plan is unique; they are not aware of a bar shuttle of this type.<sup>10</sup> The moving vehicles that have licenses to serve alcohol in Alaska are boats (such as the Riverboat Discovery), planes, and trains. The Alaska Railroad holds such a license and, according to the testimony at the hearing, its trains pass within 200 feet of churches and run immediately adjacent to the West Valley High School property in Fairbanks.<sup>11</sup>

### *B. Community Reaction*

Reactions to the Pub Line proposal in the Fairbanks-area community are mixed. One city firefighter and paramedic testified that the proposed service would reduce demand for emergency services. He reasoned that the solutions currently in place for transporting inebriated bar patrons are not working, and that because police can rarely take people home, there is no affordable and safe way for these patrons to reach their homes. He noted that, late in the evening at bar break (closing time for bars), the bus would be taking people away from the city's emergency service area, reducing demand.<sup>12</sup> Fairbanks City Councilman Chad Roberts shares the positive view of the proposal, believing that "the better and more available alternatives are to the public, the more likely we will reduce the number of intoxicated drivers we have on the streets."<sup>13</sup>

On the other hand, the overall view of the Fairbanks City Council, by a narrow margin, is that the license should not be issued because "a proliferation of 'party busses' within the City of Fairbanks is not compatible with the economic rehabilitation efforts within its core area, the Vision Fairbanks plan, police efforts to curb public inebriation, and the emergence of a sustained community need to blunt the pervasive effects of alcoholism."<sup>14</sup> The Council passed a resolution

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<sup>8</sup> Cross-exam of Martin.

<sup>9</sup> Redirect exam of Foley.

<sup>10</sup> The model may not be wholly dissimilar from that of tour vehicles that operate between breweries and wineries in the lower 48, some of which apparently serve alcohol en route. *See, e.g.*, "Beer Bomb Bus Tour: Shipyard Brewing Company in Orlando, Florida," Orlando Sentinel, April 11, 2009. The parties did not explore this comparison, however.

<sup>11</sup> Direct testimony of Foley.

<sup>12</sup> Direct and cross exam of Powers.

<sup>13</sup> A.R. 28.

<sup>14</sup> A.R. 30.

opposing the license on a 4-3 vote, but only after it had voted unanimously to strike the phrase “strongly opposes” and to replace it with “opposes.”<sup>15</sup>

Fairbanks Police Chief Laren Zager testified that, although he is not positive, he is “very skeptical” that the Pub Line concept can reduce driving under the influence. He thinks it is more likely that the service would add to overall risk. He noted that patrons will have difficulty maintaining balance in a moving bus as they purchase drinks. Based on his experience as a street policeman in Baltimore, he believes altercations or medical emergencies in buses are difficult or dangerous for emergency personnel to handle owing to the restricted maneuvering room. He thinks that if alcohol is served on the bus, the rate of consumption will go up (he did not indicate whether he was merely comparing the rate of consumption to that of passengers on a bus with no bar or whether he was comparing it to that of patrons who, rather than using a bus, go from bar to bar by rapid means such as a personal vehicle). He is also concerned that a party bus going down the street diminishes what he refers to as the “cachet” of Fairbanks.<sup>16</sup>

Fairbanks Mayor Terry Strle shares her police chief’s concerns and likewise characterizes herself as skeptical that the Pub Line concept can produce an overall improvement in risk. She demonstrated the depth of her administration’s concern about the license by devoting four hours to the hearing.<sup>17</sup>

### **III. Discussion**

#### *A. Applicable Law*

The license Pub Line seeks is a common carrier dispensary license under AS 04.11.180. Because the license would apply to a mobile facility that would not operate exclusively within the City of Fairbanks, the City of Fairbanks is not a “local governing body” with respect to this license and does not have “protest” rights under AS 04.11.480. Therefore, this proceeding is not one in which a local government protest must be upheld unless “arbitrary, capricious, and

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<sup>15</sup> A.R. 28, 30.

<sup>16</sup> Direct and cross exam of Zager.

<sup>17</sup> Direct and cross exam of Strle. Mothers Against Drunk Driving Chapter President Daniel Eagan gave very similar testimony to that of Zager and Strle; he recognizes that Pub Line would offer an alternative to drinking and driving, but is concerned that its net effect would be negative due to increased opportunities to consume and due to the fact that the bus would not always get patrons home, which would still leave them as potential inebriated drivers or pedestrians.

unreasonable.”<sup>18</sup> Instead, the city’s opposition is an “objection” under AS 04.11.470, which the board must “consider.”

The board must deny the license if any of a variety of conditions are found, two of which are potentially relevant to this application. These are: (1) that the license “would not be in the best interests of the public” and (2) that “the license is prohibited by AS 04.11.410, relating to location of premises near churches and schools.”<sup>19</sup>

Turning to the second ground first, AS 04.11.410 prohibits licensing premises “in a building the public entrance of which is within 200 feet of a school ground or a church . . . .” There was some testimony at the hearing suggesting that the Pub Line application could violate this provision because the bus could pass, or stop, within the 200-foot limitation. However, it is clear that the ABC Board does not interpret AS 04.11.410 to apply to common carrier dispensaries since it has licensed dispensaries on trains that pass within 200 feet of school grounds. The board’s interpretation is appropriate, since section 410 only restricts premises “in a building.” Thus, the only standard against which the Pub Line application is to be measured is whether it is “in the best interests of the public.”

Importantly, the board is empowered to impose conditions or restrictions on any license if it believes conditions are in the best interests of the public.<sup>20</sup> The lack of an informal conference in this case means that the full range and exact potential terms of practicable restrictions has not been explored.<sup>21</sup> Pub Line has indicated that it would accept, and indeed would like, conditions holding it to a particular route, restricting it from coming within 200 feet of a church or school, and requiring it to shut down alcohol sales at the point when customers are being transported home.<sup>22</sup>

Consideration of an application for a dispensary license is governed by the Administrative Procedure Act.<sup>23</sup> Under that act, Pub Line has the burden of proof to show that its application ought to be granted.<sup>24</sup>

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<sup>18</sup> AS 04.11.480(a). Thus, this proceeding reviews the license application on a different basis from the one applied in *In re Robert Stevens d/b/a Fish Heads Bar and Grill*, OAH No. 05-0534-ABC (ABC Board, adopted June 15, 2006) (published at <http://aws.state.ak.us/officeofadminhearings/Documents/ABC/ABC050534.pdf>).

<sup>19</sup> AS 04.11.320(a)(1), (2).

<sup>20</sup> AS 04.11.395.

<sup>21</sup> As noted in the Part I, Mr. Martin did not use the opportunity for an informal conference and instead proceeded directly to a formal hearing.

<sup>22</sup> Direct testimony and cross-exam Martin; closing remarks of Martin.

<sup>23</sup> AS 04.11.510(b)(1).

<sup>24</sup> AS 44.62.460(e)(2).

*B. Merits of the Pub Line Application*

Applying these principles to the present case, the evidence does not quite demonstrate that it is more likely than not that the Pub Line license is “in the best interests of the public.” Although Pub Line’s business plan is innovative and it is conceded by all that it might reduce drunk driving, three factors weigh against granting the license.

First, the police chief’s concerns about safety of patrons in a bar on a bus, and about the difficulty of responding to emergencies in restricted quarters, were logical and well-founded. There may be answers to these concerns, but Pub Line did not address them at all.

Second, the City of Fairbanks, where the bus would operate most of the time, has determined that the proposal does not comport with its policies with respect to downtown development and alcohol control. To be sure, the city’s opposition to the plan rests on a very thin vote margin, but that is why votes are taken; opposition to the proposal has been duly voted as the city’s official position. So long as that position is unchanged, it is entitled to some deference. The city government is in a better position than the administrative law judge or the ABC Board to perceive what is in the best interests of those within its boundaries, who make up a large portion of the population served by Pub Line.

Third, the Pub Line proposal would be an experiment. To make it as safe an experiment as possible, the license would need conditions. However, Pub Line has never made a detailed proposal of the conditions that would make sense, and has not engaged in the informal conference process where detailed conditions could be hammered out. For example, Pub Line proposes that its route be restricted, but it is not clear how the board could write those restrictions based on the limited information in the record.

**IV. Conclusion**

Because the applicant has not demonstrated that a common carrier dispensary license would be in the best interest of the public, the application should be denied.

DATED this 2<sup>nd</sup> day of July, 2009.

By: Signed  
Christopher M. Kennedy  
Administrative Law Judge

## Adoption

The Alcoholic Beverage Control Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 14th day of July, 2009.

By: Signed  
Signature  
Robert Klein  
Name  
Chair, Alcohol Beverage Control Board  
Title

[This document has been modified to conform to technical standards for publication.]