C.R.S. 12-47-301

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session
of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 12. PROFESSIONS AND OCCUPATIONS
GENERAL - Continued
ARTICLE 47. ALCOHOL BEVERAGES
PART 3. STATE AND LOCAL LICENSING

C.R.S. 12-47-301 (2013)

ANNOTATION

Annotator's note. Since § 12-47-301 is similar to § § 12-46-106, 12-46-108, and 12-47-106 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

Cases Decided Under Former § 12-46-106.

It was the legislative intent in passing this article to vest a wide discretion in licensing authorities. MacArthur v. Sierota, 122 Colo. 115, 221 P.2d 346 (1950); Geer v. Susman, 134 Colo. 6, 298 P.2d 948 (1956); Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957); Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962); Bd. of County Comm'rs v. Bova, 153 Colo. 230, 385 P.2d 590 (1963).

In acting on an application for a liquor license, the licensing authority has considerable latitude and broad discretionary power. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962).

No authority to establish local public policy. The wide discretion vested in the licensing authority in granting or denying beverage licenses is not to be construed as authority to establish a local public policy, either by express resolution or by secret agreement contrary to the state statute legalizing the issuance of such licenses. Buddy Lloyd's Store No. 1, Inc. v. City Council, 139 Colo. 152, 337 P.2d 389 (1959); Sierota v. Scott, 143 Colo. 248, 352 P.2d 671 (1960).

The licensing authority must not act arbitrarily or capriciously. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Nor does it have untrammeled power. An agency empowered with discretion to grant or deny a fermented malt beverage license does not have untrammeled power; it too is subject to standards and delimitations. Capra v. Davenport, 158 Colo. 537, 408 P.2d 448

(1965).

The power to license the sale of alcoholic beverages includes the power to refuse a license, even when the statutory or preliminary requirements are complied with. Geer v. Susman, 134 Colo. 6, 298 P.2d 948 (1956).

The licensing authorities of the state have authority to issue a number of licenses for the sale of fermented malt beverages to a licensee. Big Top, Inc. v. Schooley, 149 Colo. 116, 368 P.2d 201 (1962).

The city and county of Denver could not, under the guise of regulation, prohibit the issuance of more than one license to sell fermented malt beverages where the general assembly, by whom the delegation to regulate was made, has clearly indicated that a licensee may be issued multiple licenses under this article. Big Top, Inc. v. Schooley, 149 Colo. 116, 368 P.2d 201 (1962).

This article authorizes municipalities to make reasonable rules and regulations governing the sale of 3.2 beer. Sierota v. Scott, 143 Colo. 248, 352 P.2d 671 (1960).

Each license application must be determined upon the facts as they exist at the time, not as they may have existed when a previous application was made. Vigil v. Burress, 157 Colo. 507, 404 P.2d 147 (1965).

A licensee under this article does not have a vested right to a renewal. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

The question of renewal becomes one for the exercise of the discretion of the licensing authority and it may refuse to renew such license upon good cause shown. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

A licensing authority may not arbitrarily or summarily deny a renewal. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

What is good cause for denial of license renewal depends upon the circumstances of the case. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

Where county commissioners disregard the evidence presented, the denial of a license is arbitrary and capricious. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962); Hirsch v. Bd. of Trustees, 150 Colo. 50, 370 P.2d 760 (1962).

It is the duty of the local licensing authority to exercise its discretion on the basis of all of the evidence adduced at the hearing on the application, and not from a synopsis of the hearing officer. Big Top, Inc. v. Hoffman, 156 Colo. 362, 399 P.2d 249 (1965).

Doubts resolved in favor of authority. Where the evidence shows the need of an applicant for a license, but not convincingly, the requirement of the community for it, all reasonable doubt must be resolved in favor of the licensing authority. Geer v. Susman, 134 Colo. 6, 298 P.2d 948 (1956); City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961); Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962).

It is the duty of an applicant to make out a prima facie case before the licensing authority, and having made out a prima facie case, then those opposing the granting of the license should have an opportunity to show cause why the license should not be issued. Bd. of

County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Lack of hearing, etc., no basis for order to issue license. A finding by the trial court that there was no hearing, no evidence taken, and no consideration on the merits of an application for a liquor license before a board of county commissioners is not sufficient to sanction an order directing the board to issue the license. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Where the record fails to disclose any valid reason for the denial of an application to dispense 3.2 beer, a judgment finding that the board of county commissioners abused its discretion in denying such license and ordering the same to issue was not erroneous. Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

Refusal where store located close to school. The licensing authority, in its discretion, could refuse to issue a license to sell at retail 3.2 percent beer to an applicant whose store was located only 176 feet from a school with students both above and below the age of 18 who frequented such store. MacArthur v. Sierota, 122 Colo. 115, 221 P.2d 346 (1950).

Where an applicant sought a license to dispense 3.2 beer in a residential neighborhood where a considerable juvenile and teenage problem existed, and such license was denied by the licensing authority on the ground that existing outlets were sufficient to meet the requirements of the community, and that a substantial number of persons living in the area desired that the license be denied, a claim that the licensing authority failed to give candid and honest consideration to the facts before him in the exercise of his discretion falls short of that required to overcome the presumption of validity attending his administrative acts. Geer v. Susman, 134 Colo. 6, 298 P.2d 948 (1956).

Where neighborhood requirements were adequately served. Where record does not reflect that reasonable requirements of neighborhood are not being adequately served by existing 3.2 percent beer outlets, one of which is to be found within distance of one city block from premises of applicant and another within two or three blocks east of applicant's store, denial of application by licensing authority under such circumstances was neither arbitrary nor capricious. Capra v. U-Tote'm of Colo. Inc., 159 Colo. 130, 410 P.2d 171 (1966).

Despite inconvenience. Where the evidence showed nine outlets for the sale of beer within a radius of six blocks of applicant's store, and the testimony for applicant was limited and related only to an inconvenience in the location of other beer outlets, it could not be said that the showing made by applicant of the need for another beer outlet in the neighborhood was so plain and certain that the action of the licensing authority in denying the application was arbitrary and without good cause. MacArthur v. Sierota, 122 Colo. 115, 221 P.2d 346 (1950).

Denial of a license because of speculative reasons such as possible vandalism, noise, or disturbances, where it is obvious that these factors alone and not the required factors were the basis for the denial, is without legal justification. Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

Denial of a license because of resulting traffic and parking problems is without legal justification. Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

Issuance of other license not an admission of need. Where an application for a beer license was refused, the subsequent issuance of a license for the sale of malt, vinous, and spirituous liquors to another applicant on premises only three blocks away was not an

admission that there was a reasonable need and requirement for another licensed place in the neighborhood nor did it prove that the denial of the license to the applicant was plainly arbitrary. MacArthur v. Sierota, 122 Colo. 115, 221 P.2d 346 (1950).

A reference in the findings to previous proceedings was improper. Vigil v. Burress, 157 Colo. 507, 404 P.2d 147 (1965).

County may lawfully issue 3.2 percent license to nonprofit corporation which is licensee-concessionaire of a portion of golf clubhouse facilities, in order to provide such service to the patrons of the golf course and to the general public. Adams County Golf, Inc. v. Colo. Dept. of Rev., 199 Colo. 423, 610 P.2d 97 (1980).

Applied in Duran v. Riggs, 147 Colo. 278, 363 P.2d 656 (1961).

Cases Decided Under Former § 12-46-108.

Law reviews. For article, "Moral Character of the Liquor Licensee or Applicant", see 25 Colo. Law. 79 (February 1996).

The applicable legal requirements to be considered in issuing licenses are set forth in this section which deals with qualifications and conditions for license. Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

In the exercise of the police power the licensing authority may refuse to issue or renew a license for any good cause, and the courts may reverse the decision only if the refusal was arbitrary or without good cause under the circumstances of the case. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

Discretion of licensing authority. In acting on liquor applications, there is considerable latitude and discretion in the local licensing authority. However, its power to act is not a completely unbridled one and its action is subject to judicial review. Nat'l Convenience Stores, Inc. v. City of Englewood, 192 Colo. 109, 556 P.2d 476 (1976).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

The applicant has the burden of showing prima facie that the desires and reasonable requirements of the neighborhood dictate the issuance of the license. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962).

Language concerning good moral character in section 12-48.5-108, which is similar to language in this section, is applied in R F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

The liquor licensing authority has a duty to consider the character and reputation of the applicant. MacLarty v. Whiteford, 30 Colo. App. 378, 496 P.2d 1071 (1972).

Consideration of conduct and location proper. It is entirely proper for a licensing authority to take into account not only the conduct of the licensee but also conditions which render a continuance of a 3.2 beer license in a particular location against the public interest. City of

Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

The licensing authority is not limited in its consideration to the applicant's character, the need of the neighborhood, and the desires of the inhabitants. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

No arbitrariness in board's definition of neighborhood. Where the board in defining the neighborhood involved included therein not only the two subdivisions mentioned but also a few blocks south and west of said Duran's subdivision, wherein were located three existing 3.2 outlets, and also included in the neighborhood the fringe area adjacent, the board did not act arbitrarily in defining neighborhood to be affected. Duran v. Riggs, 147 Colo. 278, 363 P.2d 656 (1961).

The term "neighborhood" signifies nearness as opposed to remoteness. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

But not entire county. Moreover, no authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include an entire county. Kerr v. Bd. of County Comm'rs, 170 Colo. 227, 460 P.2d 235 (1969).

Requirements of neighborhood and desires of inhabitants considered. This section requires the local licensing authority to consider not only the reasonable requirements of the neighborhood, but also the desires of its inhabitants. Neither is in itself controlling, but both must be considered together. Duran v. Riggs, 147 Colo. 278, 363 P.2d 656 (1961); Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962); Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

In regard to an application for a 3.2 percent beer license, local authorities are to consider the reasonable requirements of the neighborhood and the desires of the inhabitants. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Record must show prima facie desires, etc., of neighborhood. The granting or denial of a beverage license depends on the record made by an applicant before the local licensing authority and must show prima facie the desires and reasonable requirements of the neighborhood. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962).

Under the statutory standard the applicant has the burden of making a prima facie showing that the desires of the inhabitants and reasonable requirements of the neighborhood establish the need for the issuance of the license. Nat'l Convenience Stores, Inc. v. City of Englewood, 192 Colo. 109, 556 P.2d 476 (1976).

Where the record before county commissioners discloses that the residents of a neighborhood indicated a desire that a license to dispense 3.2 beer be issued to an applicant and that there is no similar outlet in the entire community, a determination by a trial court that a denial of the application by the board was arbitrary and without good cause is proper. Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

Where evidence discloses that the overwhelming majority of persons living in a town are opposed to the granting of a liquor license, denial of the application therefor by board of county commissioners is neither arbitrary nor an abuse of discretion. Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962).

Prospective patrons considered. In determining whether a license to dispense 3.2 beer

should be granted or denied to a dog racing kennel club, the patrons of the track were to be considered in determining the needs of the particular location. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

Inhabitants' petitions considered. This section precludes the licensing agency from granting a license until it has given good faith consideration to inhabitants' petitions and remonstrances. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

The number of persons signing for or against a license is not wholly determinative of either the reasonable requirements or the desires of the neighborhood. Vigil v. Burress, 157 Colo. 507, 404 P.2d 147 (1965).

It is not dispositive that plaintiff obtained more signatures in favor of the license than were presented by defendant in opposition. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Other proof. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Letters from various organizations and individuals from a city at large have no probative value whatever. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

The desires of the citizens of one county cannot be controlling on the board of county commissioners of another county. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

Evidence before a licensing authority relating to teenage problems, noise, and rowdiness, indicating that such conditions were in substantial measure due to existence of 3.2 beer license of the applicant, authorized the licensing authority to determine that the license in the particular location was against the public interest. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

Denial of a license because of resulting traffic and parking problems is without legal justification. Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

Denial of a license because of speculative reasons such as possible vandalism, noise, or disturbances, where it is obvious that these factors alone and not the required factors were the basis for the denial, is without legal justification. Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

The mere existence of other outlets in the neighborhood, although a factor to be considered by the licensing authority, is not in itself a sufficient ground for denying a license. Nat'l Convenience Stores, Inc. v. City of Englewood, 192 Colo. 109, 556 P.2d 476 (1976).

The number and location of outlets licensed under the state "liquor code" are not a controlling factor in determining whether a license to dispense at retail fermented malt beverage by the package should be granted. Hirsch v. Bd. of Trustees, 150 Colo. 50, 370 P.2d 760 (1962).

The lack of proof that the neighborhood is not adequately served precludes issuance of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

The proximity of the proposed outlet to the existing outlet is an important factor properly to be considered by the licensing authority. Big Top, Inc. v. Hoskinson, 158 Colo. 400, 407 P.2d 26 (1965).

Must distinguish "package" and "by the drink" outlets. Where it appeared from the licensing agency findings that in consideration of the reasonable requirements of the neighborhood it refused to take cognizance of the distinction between outlets dispensing 3.2 beer by the package and a proposed outlet which would offer 3.2 beer by the drink, it acted arbitrarily. Kerr v. Bd. of County Comm'rs, 170 Colo. 227, 460 P.2d 235 (1969).

Outlets found inadequate. A complete absence of a 3.2 outlet within a radius of five miles cannot be said to serve the reasonable requirements of the neighborhood. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957); Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

Where the record disclosed that only one outlet as that for which license was sought had been authorized in entire county, located at a distance of 25 miles from city where applicant resided, a license to sell 3.2 beer was unlawfully denied by the city council. McNeill v. City Council, 148 Colo. 277, 365 P.2d 687 (1961).

Where the record disclosed not a single outlet in a town for the dispensing of 3.2 beer, a finding by the town board of trustees that the area was served adequately with such beverage was wholly unsupported. Hirsch v. Bd. of Trustees, 150 Colo. 50, 370 P.2d 760 (1962).

Cases Decided Under Former § 12-47-106.

I. General Consideration.
II. Neighborhood Requirements.

I.GENERAL CONSIDERATION.

Law reviews. For comment on Campbell v. City Council, appearing below, see 35 U. Colo. L. Rev. 252 (1963). For note, "The Liquor Code -- Colorado Revised Statute Antiquated", see 38 U. Colo. L. Rev. 248 (1965).

Delegation of legislative authority to the Department of Excise and Licenses to adopt rules and conduct hearings on applications to renew liquor licenses is not unconstitutional on the basis that the statute fails to provide sufficient standards for defining "good cause". Squire Restaurant and Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

Statutory licensing guide. The licensing authority is by statute charged with the duty and task of determining whether a license should be granted or denied, and the statutory guide provided for the board in performing this duty is found in this section. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

Supreme court decisions. Another source of guidance for the board in performing its duties as a licensing authority is the numerous pronouncements of the supreme court. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

Three principles pervade all of the pertinent decisions: (1) The licensing authorities are vested with a very wide discretion; (2) all reasonable doubts as to the correctness of the

board's rulings are to be resolved in favor of the board; (3) the determination of the board will not be disturbed by the courts unless it appears that the board has abused its discretion. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

The issuance of licenses under the liquor code depends in the final analysis on the judgment of the licensing authority and not upon that of citizens or the court; and all reasonable doubt must be resolved in favor of the licensing authority. Kornfeld v. Yost, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. Kornfeld v. Perl Mack Liquors, Inc., 193 Colo. 442, 567 P.2d 383 (1977).

It was the intention of the general assembly to vest a wide discretion in local licensing authorities in the issuance of licenses for sale of alcoholic beverages. Gem Beverage Co. v. Geer, 138 Colo. 420, 334 P.2d 744 (1959).

Governed by facts and circumstances. While a wide discretion is vested in the county commissioners with respect to the issuance of liquor licenses, the exercise of that discretion must be governed by a proper consideration of the facts and circumstances in each case. Bd. of County Comm'rs v. Buckley, 121 Colo. 108, 213 P.2d 608 (1949).

The exercise of this discretion cannot be dispensed with by the adoption of a policy to deny all applications. Bd. of County Comm'rs v. Buckley, 121 Colo. 108, 213 P.2d 608 (1949).

The discretion of the licensing officer in granting or refusing a license is well established by the decisions of the supreme court. Cronin v. Ward, 144 Colo. 192, 355 P.2d 655 (1960).

The general assembly has established the public policy for the entire state, and this cannot be overridden by local governments by mere fiat nor ignored by the courts. Le Pore v. Larkin, 146 Colo. 311, 361 P.2d 343 (1961).

No contrary local policy authorized. The wide discretion which is vested in the licensing authority in granting or denying licenses is not to be construed as authority to establish a local public policy either by express resolution or by secret agreement contrary to the state statutes which have legalized the issuance of this particular type of license. Ladd v. Bd. of County Comm'rs, 146 Colo. 366, 361 P.2d 627 (1961).

Licensing procedures must not be used as a means of establishing local option and circumventing statutory requirements. Le Pore v. Larkin, 146 Colo. 311, 361 P.2d 343 (1961).

Local authority to license, not to regulate. The board of county commissioners has no authority to regulate the sale of malt and vinous liquors, other than 3.2 percent beer, but only to grant, suspend, or revoke licenses as provided by this section. Gettman v. Bd. of County Comm'rs, 122 Colo. 185, 221 P.2d 363 (1950).

A resolution of a city council limiting the number of liquor licenses on the basis of citywide population is invalid as tantamount to a prejudgment of any application, this article requiring a hearing, and issuance or denial of a license on the merits of each application. City of Colo. Springs v. Graham, 143 Colo. 97, 352 P.2d 273 (1960).

No authority to regulate hours. No attempt to delegate to the board of county commissioners any authority of regulation as to hours when malt or vinous liquors may be sold or the authority to promulgate other rules and regulations is made by this section. Gettman v. Bd. of County Comm'rs, 122 Colo. 185, 221 P.2d 363 (1950).

Personal right vested in licensee. A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. A. D. Jones Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

Liquor license is a property right entitled to due process protection including notice and an opportunity to be heard and, therefore, due process was denied when claimant for liquor license renewal was not notified that evidence would be taken on the needs and desires of the neighborhood. Price Haskel v. Denver Dept. of Excise Licenses, 694 P.2d 364 (Colo. App. 1984).

This section permits removal to another location of a hotel and restaurant license upon a proper showing. A. D. Jones Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is not an agreement for the transfer of the license. A. D. Jones Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

Full, fair, and impartial hearing. Where an applicant was given full opportunity to present all testimony and documentary evidence it desired, and availed itself of such opportunity, the fact that the chairman of the board of county commissioners at beginning of hearing expressed the opinion that needs of the neighborhood were presently met, falls short of denial to applicant of full, fair, and impartial hearing. Lab Dev. Co. v. Hill, 152 Colo. 338, 381 P.2d 811 (1963).

No court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports the conclusion of the licensing authority. Canjar v. Huerta, 193 Colo. 388, 566 P.2d 1071 (1977); Duren, Inc. v. City of Lakewood, 709 P.2d 74 (Colo. App. 1985).

Denial upheld where not arbitrary or capricious. While not supported by a preponderance, the denial of a retail license will be upheld if supported by sufficient evidence, if the licensing authority did not act arbitrarily and capriciously. Bd. of County Comm'rs v. Thompson, 167 Colo. 402, 448 P.2d 639 (1968).

"Good cause" standard fails to give sufficient notice. Standard in liquor code of "good cause" as the criterion for determining if a liquor license is renewed, without any implementing rules, fails to give sufficient definiteness of what conduct and conditions are required to avoid nonrenewal, fails to insure rational and consistent administrative action and effective subsequent judicial review of that action, and therefore violates due process. Some limit must be provided by the Department of Excise and Licenses to guide discretion in determining if "good cause" for refusing to renew a liquor license exists. Squire Restaurant and Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

Abuse of discretion. An example of refusal for good cause is where the board of county commissioners refused to grant a liquor license to an operator of a rural hotel and based its decision on the fact that the premises could be reached only by a dangerous, winding country road in a mountainous area and also on the ground of the proximity of young people at a nearby college, it was held not to be an abuse of discretion. Bd. of County

Comm'rs v. Buckley, 121 Colo. 108, 213 P.2d 608 (1949).

The right of a licensing authority to refuse for good cause, of necessity vests in the board of county commissioners in any county in the first instance the right to determine what is good cause for refusal. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936); Bd. of County Comm'rs v. Buckley, 121 Colo. 108, 213 P.2d 608 (1949).

Prior license action not binding. The board is not bound by any prior action of any licensing authority with relation to the facts pertaining to the issuance of any license for former years, but is called upon to exercise its own discretion as of the date of a new application. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

Conceivably, the licensing authority passing upon a new application, in the exercise of its discretion, might with propriety reject an application which a former board, upon the same facts, approved, and in so doing the board would not, of necessity, be guilty of an abuse of discretion, or an arbitrary and capricious exercise thereof. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958); Cronin v. Ward, 144 Colo. 192, 355 P.2d 655 (1960).

That a licensing officer had previously denied the application to another to operate an establishment at the same premises does not preclude the issuance of a license to an applicant who in his judgment and discretion is qualified therefor. Cronin v. Ward, 144 Colo. 192, 355 P.2d 655 (1960).

Evidence at second court-ordered hearing. Upon a second hearing on an application for a liquor license, held pursuant to an order of court, the licensing authority is not limited only to the exhibits offered at the first hearing and the testimony of those witnesses only who testified therein. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

Applied in Awr Corp. v. Bd. of County Comm'rs, 154 Colo. 511, 391 P.2d 675 (1964); Smith v. Bd. of County Comm'rs, 155 Colo. 175, 394 P.2d 840 (1964).

II.NEIGHBORHOOD REQUIREMENTS.

Applications are considered and determined upon a geographical basis, a neighborhood, and not upon a citywide population basis. City of Colo. Springs v. Graham, 143 Colo. 97, 352 P.2d 273 (1960).

Determined by city council. The members of a city council, as the local licensing authority, knowing the area which they represent and the problems confronting it, are better able to consider what should constitute the "neighborhood" after considering all of the evidence presented to it than is the supreme court. Campbell v. City Council, 150 Colo. 471, 374 P.2d 348 (1962).

The geographic extent of the neighborhood will vary from case to case. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Never entire county. No authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include an entire county. Bolton v. Bd. of County Comm'rs, 164 Colo. 112, 432 P.2d 761 (1967).

Boundary lines of a city do not exclude residents on one side or the other from the "neighborhood" to be considered in connection with applications for liquor licenses. Bd. of

County Comm'rs v. Bickel, 155 Colo. 465, 395 P.2d 208 (1964); Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The existence or nonexistence of outlets on either side of a city boundary are to be considered by the licensing authority in determining whether reasonable requirements of the neighborhood are being met. Bd. of County Comm'rs v. Bickel, 155 Colo. 465, 395 P.2d 208 (1964); Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. Canjar v. Huerta, 193 Colo. 388, 566 P.2d 1071 (1977).

The licensing of so-called "fringe stores" is not a matter that in and of itself is a bar to the issuance of licenses, but is merely a circumstance to which the board is entitled to give such reasonable weight as it shall determine. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

Applicant's showing of neighborhood. It is incumbent upon an applicant for a liquor license to show with some degree of clarity the area of the neighborhood requiring the service proposed to be rendered. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

The test under subsection (2) is still the "desires of the inhabitants" and "the reasonable requirements of the neighborhood". Tavella v. Eppinger, 152 Colo. 506, 383 P.2d 314 (1963).

Before a liquor license can be issued under subsection (2), two requirements must be affirmatively established: 1. that the reasonable requirements of the neighborhood are not being met by existing outlets, and 2. that the inhabitants of the neighborhood desire its issuance. Heinz v. Bauer, 150 Colo. 589, 375 P.2d 520 (1962).

The licensing authority must determine both the reasonable requirements of a neighborhood and the desires of its inhabitants. Canjar v. Huerta, 193 Colo. 388, 566 P.2d 1071 (1977).

Unless both requirements are met no license may issue. Heinz v. Bauer, 150 Colo. 589, 375 P.2d 520 (1962).

Establishing these two requirements is the statutory responsibility of the board. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Showing of inadequate service required. An applicant is entitled to a license only on proof that the neighborhood sought to be served is not adequately served by the other licensed outlets. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Where there are a number of licensed outlets in an area, an applicant for an additional liquor license has the burden to establish by competent evidence that the needs of the community are not being adequately met by existing outlets. Bd. of County Comm'rs v. Evergreen Lanes, Inc., 154 Colo. 413, 391 P.2d 372 (1964).

Lack of proof of the fact that the neighborhood is not adequately served precludes the issuance of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Economic competition considered. Whether any benefit will result to the public from competition in the sale of intoxicating liquor in a particular area is a matter which the licensing authority may consider in determining the reasonable requirements of the neighborhood and the desires of the inhabitants, the weight to be accorded such matter being within the sound discretion of the authority. Lab Dev. Co. v. Hill, 152 Colo. 338, 381 P.2d 811 (1963).

The weight to be accorded to such matters as whether any benefit will result to the public from economic competition lies within the sound discretion of the board of county supervisors. Lab Dev. Co. v. Hill, 152 Colo. 338, 381 P.2d 811 (1963).

Number and proximity of other outlets considered. Besides considering the number of outlets in the area, the board of county commissioners may properly take into account in its consideration of the case the fact that close to the location for which a license is sought there are existing outlets to serve the public. Jennings v. Hoskinson, 152 Colo. 276, 382 P.2d 807 (1963).

The existence of a desire for a new outlet is some evidence that the reasonable requirements of the neighborhood were not being met. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

Regardless of their reasons, the desires of the inhabitants are to be considered. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

Where protests were based on the general policy that liquor is evil, and secondly that there was a package store nearby, such protests were not relevant and should not have been considered since the application was for liquor by the drink. Since there was no competent evidence before the board to negate the affirmative showing by the applicant, and the board arbitrarily restricted the neighborhood, the license should have been granted. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Consideration of proof unlimited. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Effect of petitions and remonstrances of inhabitants. While the expression of opinions as to the requirements of the neighborhood and the needs of the inhabitants thereof, contained in petitions and remonstrances, are entitled to consideration, they are not controlling since this section requires that the issuance of licenses shall depend on the judgment of the licensing authority and not on that of citizens or the court. MacArthur v. Presto, 122 Colo. 202, 221 P.2d 934 (1950); MacArthur v. Sanzalone, 123 Colo. 166, 225 P.2d 1044 (1950).

The statute precludes the board from granting a license until it has given good faith consideration to inhabitants' petitions and remonstrances. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Geographical distinctions within a neighborhood do not determine the efficacy of petitions or

remonstrances in liquor licensing cases. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a greater number of inhabitants had signed petitions favoring issuance of the license does not of itself mandate issuance thereof. Kornfeld v. Yost, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. Kornfeld v. Perl Mack Liquors, Inc., 193 Colo. 442, 567 P.2d 383 (1977).

Where remonstrances against the granting of a beverage license are signed by others than those resident in a defined neighborhood of a licensee's outlet, and its issuance is supported by several hundred persons resident in the immediate neighborhood, the petitions supporting the application are sufficient to justify its issuance, and there being nothing to indicate that a city council acted arbitrarily or capriciously in granting a license, the courts will not interfere. Hanna v. Henderson, 140 Colo. 481, 345 P.2d 384 (1959).

Votes in local option election. The desires of the citizens "otherwise" expressed by their votes in a local option election is likewise admissible evidence to be considered in ascertaining the "desires of the inhabitants", and given such weight as the board of commissioners deemed proper under this section. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

Needs of traveling public. In determining the reasonable requirements of neighborhood upon application for a restaurant liquor license, evidence of the reasonable need of the traveling public and transients is valid to show such need and demand. Campbell v. City Council, 150 Colo. 471, 374 P.2d 348 (1962).

Showing of inadequate service sufficient. Where the record discloses that there are no restaurant liquor licenses in the city, and no such license in the entire county, the nearest outlet of the kind being 50 miles distant, it cannot be said that the reasonable requirements of the area have been met. Farmer v. City Council, 153 Colo. 306, 385 P.2d 596 (1963).

Where there is a substantial showing that a liquor outlet is desired in a community, it cannot be said that the reasonable requirements of the neighborhood are being served when it appears that the nearest outlet of the kind sought is 12 or 13 miles distant from the location requested. Bd. of County Comm'rs v. Whale, 154 Colo. 271, 389 P.2d 588 (1964).

Where the only licenses presently existing in a city are for private clubs and package liquor stores, and more favor than disfavor the license in the immediate neighborhood, there is no basis upon which the application of plaintiff may legally be denied since there are no licenses of the type sought within a five mile radius. Le Pore v. Larkin, 146 Colo. 311, 361 P.2d 343 (1961).

Where the general assembly has authorized the issuance of hotel and restaurant liquor licenses throughout the state, thus determining the public policy, and where the evidence disclosed that no such license had ever been issued in city of size and population disclosed by the record, and substantial support for the issuance of such license is shown, it cannot be said that reasonable requirements of the area have been met. KBT Corp. v. Walker, 148 Colo. 274, 365 P.2d 685 (1961).

Denial arbitrary and capricious. Where there is no liquor outlet of a given classification within a radius of several miles, the refusal to grant such a license is arbitrary and capricious where substantial support for the issuance thereof is shown. Bd. of County Comm'rs v. Bickel, 155 Colo. 465, 395 P.2d 208 (1964); Bd. of County Comm'rs v. Johnson,

170 Colo. 259, 460 P.2d 770 (1969).

Where an application for a hotel and restaurant liquor license was denied and evidence disclosed that there was no such outlet within a radius of 35 miles of city, the determination of city council that the neighborhood was adequately supplied by existing outlets was arbitrary and capricious. KBT Corp. v. Walker, 148 Colo. 274, 365 P.2d 685 (1961).

Showing of inadequate service insufficient. Where there are a number of licensed outlets in an area in which a restaurant license is sought, evidence that many residents of the neighborhood desired to dine at applicants' restaurant and desired to be served liquor with their meals, does not alone establish that existing outlets were inadequate to satisfy the desires of the inhabitants and the reasonable requirements of the neighborhood. Bd. of County Comm'rs v. Bova, 153 Colo. 230, 385 P.2d 590 (1963).

The finding of the trial court that the applicant plans to provide a general recreation facility and that such facility is unlike any presently existing in the area, and this is fully borne out by the evidence and is undisputed, does not evidence the fact that the neighborhood in question requires another liquor outlet, especially where the undisputed evidence is that the proposed development will proceed whether or not a liquor license is granted. Bd. of County Comm'rs v. Evergreen Lanes, Inc., 154 Colo. 413, 391 P.2d 372 (1964).

Though the applicant proved the majority of those interested desired the license to issue, and it undoubtedly would be a convenience to have such a store within the shopping center where there is more adequate parking and one stop service, nevertheless it is also true that the physical facts could, and in the judgment of the authority did, show that the present reasonable requirements of the neighborhood are being met. Brentwood Liquors, Inc. v. Schooley, 147 Colo. 324, 363 P.2d 670 (1961).

Denial not capricious or arbitrary. Where even though the desire of the neighborhood was that the license should issue, nonetheless the reasonable requirements of the neighborhood were adequately met by the existing outlets, in particular a liquor store next door to the applicant, the city council in so finding did not act arbitrarily or capriciously, but well within the limits of its discretionary power. McIntosh v. Council of City of Littleton, 145 Colo. 533, 360 P.2d 136 (1961).

Where the evidence in the record showed the existence of many licensed restaurants and liquor stores in the vicinity, this was potent evidence to support the finding that the reasonable requirements of the neighborhood had been met and that the denial of a license was not capricious or arbitrary. MacArthur v. Presto, 122 Colo. 202, 221 P.2d 934 (1950).

Where evidence disclosed three existing hotel and restaurant liquor licenses in an area designated as a neighborhood and others in close proximity thereto, a finding by the licensing authority of lack of need for issuance of license applied for, based upon a fair appraisal of the evidence, cannot be held to be arbitrary. Schooley v. Steinberg, 148 Colo. 222, 365 P.2d 245 (1961).

Where the record disclosed two package liquor outlets and two establishments serving liquor by the drink within half to three quarters of a mile of applicant's location, denial of a package liquor license by board of county commissioners was not arbitrary or capricious. Malouff v. Bd. of County Comm'rs, 150 Colo. 11, 370 P.2d 161 (1962).

Where the board of commissioners did not refuse to receive any evidence offered, and the evidence showed the location of the proposed dispensary to be in close proximity to state

college, and where the board had before it protests admitted to have been made by many of the officials of the college and of the public schools, as well as petitions signed by citizens, the court could not say that the board acted arbitrarily or capriciously in refusing a license when such action was based on evidence from which reasonable men might honestly draw different conclusions. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

Prima facie need for license shown. Where prior to condemnation by the state for highway purposes, there were two successful outlets in Silver Plume; that because of the condemnation proceedings there were none at the time of the application; that the nearest such outlet was two and one-half miles away; that 34 residents indicated the need for such an outlet; and where after denial of the application, but prior to the district court's review thereof, the trustees issued a similar license to a nearby establishment, the evidence constitutes a prima facie showing of need for the license. Booth v. Trustees of Town of Silver Plume, 28 Colo. App. 470, 474 P.2d 227 (1970).