CITY OF SACRAMENTO

OFFICE OF THE CITY CLERK
915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

June 10, 1980

APPROVED
BY THE CITY COUNCIL
JUN 10 1980
OFFICE OF THE
CITY CLERK

Honorable Mayor and City Council
City Hall
Sacramento, CA 95814

Members in Session:

SUBJECT: Appeal of David C. Foster from the decision of the Chief of Police

SUMMARY

Attached is the appeal of David C. Foster for revoking his taxicab permit No. P-148 as required by Section 42.37, City Code.

Under Sections 2.323 and 2.324, City Code, the Council may appoint a hearing examiner to hear the appeal if it finds that "the appeal may involve a lengthy fact-finding process which would be more appropriately accommodated by a formal hearing before a hearing examiner".

FINANCIAL DATA

The estimated cost would be $100.00 and would be available from the Police Department budget.

RECOMMENDATIONS

1. If the Council should decide to appoint a hearing examiner, it is recommended that the following motion be adopted: The Council hereby determines pursuant to Section 2.324, City Code, that this appeal will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner. Therefore, the Council appoints David McMurtry as a hearing examiner to hear the appeal on June 24, 1980 at 9:00 A.M. at the Council Chamber's.

2. If the Council should decide to consider the appeal itself, it is recommended that the hearing be set for July 8, 1980.

Sincerely,

Lorraine Magana
City Clerk

NOTICE OF APPEAL

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
MAY 22 11 15 AM '80

DATE: May 20, 1980

Pursuant to Section 2.320, City Code, I wish to appeal the decision made by Police Department made on May 11, 1980 regarding my permit to operate a Taxi Permit No. P- 148

as required by City Ordinance, City Code.

My reason for appealing is as follows: I was arrested for violation of 23102 CVC. I was told by the public defender to plead guilty. I was not informed that my Taxi Permit was [redacted] jeopardized by said plea. Greyhound Taxi company states that I have a good record and will keep me employed if the permit is not revoked. I believe, in good faith, that I would have been exonerated if the matter had gone to trial.

My position is that I was not properly represented, and not properly advised. This Taxi job is the only employment I have to support myself, and no similar incident will ever occur.

****

PLEASE PRINT:

NAME: DAVID C. FOSTER

ADDRESS: 1000 24th Street #5

CITY: Sacramento STATE: Calif. ZIP CODE: 95816

TELEPHONE NUMBER: 441 5407 (message only)

David Foster
SIGNATURE

CITY OF SACRAMENTO

DEPARTMENT OF POLICE
HALL OF JUSTICE
813 - 6TH STREET
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5121

JOHN P. KEARNS
CHIEF OF POLICE

May 12, 1980

5-11

David C. Foster
1000 24th Street #5
Sacramento, California 95816

Dear Sir:

Due to your arrest for Section 23102 CVC on February 8, 1980, (conviction date of 2-20-80) your taxi driver's permit #P-148 is revoked.

Please return the permit to me by mail or in person at your earliest convenience.

Sincerely,

Frank B. Silva

Frank B. Silva, Lieutenant
Commander, Traffic Section
Office of Operations

FBS:NRN:njg

Copy: Greyhound Taxi
420 Q Street
Sacramento, Ca.
95814

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915 I STREET
CITY HALL ROOM 203
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

June 11, 1980

Mr. David C. Foster
1000 - 24th Street, Apt. 5
Sacramento CA 95816

Dear Mr. Foster:

On June 10, 1980, the City Council determined that pursuant to Section 2.324, City Code, your appeal of the decision of the Police Chief regarding revoking your taxicab permit will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner.

Therefore, the Council appointed David McMurtry as Hearing Examiner to hear your appeal June 24, 1980, 9:00 A.M., at the Council Chamber, 915 - I Street, 2nd floor, Sacramento, California.

Sincerely,

Anne Mason

Anne Mason
Deputy City Clerk

am

cc: David McMurtry

Item No.

RODDA and McMURTRY
Attorneys at law

RECEIVED
CITY CLERKS OFFICE
CITY OF SACRAMENTO
JUL 15 1 03 PM '80

June 10, 1980

July 14, 1980

Ms. Lorraine Magana
City Clerk
City of Sacramento
915 I Street
Sacramento, CA 95814

Re: Appeal of DAVID CHARLES FOSTER from Decision of the Chief of Police

Dear Ms. Magana:

Enclosed is the original copy of my report as the hearing officer in the above-entitled matter. I am sending a copy of my report to Lt. Frank Silva, Commander, Traffic Section, Office of Operations, Department of Police, and to Charles H. Bitterling, Attorney for Appellant.

Very truly yours,

David W. McMurtry

DAVID W. McMURTRY

DWM:sc

Enclosure

cc: Lt. Frank Silva
Charles H. Bitterling, Esq.

2020 Hurley Way, Suite 365 ■ Sacramento, California 95825 ■ (916) 920-0902

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO
JUL 15 1 03 PM '80

In the Matter of the Appeal of)
DAVID CHARLES FOSTER from the)
Decision of the Chief of Police.)

HEARING OFFICER'S FINDINGS AND DETERMINATIONS

This matter came on to be heard on July 7, 1980, before DAVID W. McMURTRY, a hearing officer appointed by the Council of the City of Sacramento, pursuant to Section 2.324 of the Sacramento City Code.

SUBJECT OF APPEAL

This is an appeal by DAVID CHARLES FOSTER from the decision of the Chief of Police of the City of Sacramento revoking the taxicab driver's permit issued to the Appellant pursuant to Division III of Article II of Chapter 42 of the Sacramento City Code (Sacramento City Code Sections 42.29, et seq.).

SUMMARY OF EVIDENCE

The Appellant was represented at the hearing by CHARLES H. BITTERLING, Attorney at Law, 2715 K Street, Suite 3, Sacramento, California. The Chief of Police was represented at the hearing by LT. FRANK B. SILVA, Commander of the Traffic Section of the Office of Operations of the Department of Police of the City of Sacramento. The hearing officer had been previously provided with a letter from FRANK B. SILVA to the Appellant dated May 12, 1980, stating that the Appellant's taxicab driver's permit (P-148) was revoked as the result of the Appellant's arrest and conviction under Section 23102 of the California Vehicle Code (Misdemeanor Drunk Driving).

Section 42.37 of the Sacramento City Code provides that the

Chief of Police "...may revoke or refuse to renew an operator's license if the driver or applicant has, since the granting of his permit...been convicted of driving while under the influence of intoxicating liquors...".

In his Notice of Appeal filed in this matter, the Appellant stated that he was arrested for violation of Section 23102 of the California Vehicle Code and was advised by his public defender to plead guilty. He states that he was not advised by his attorney that the plea of guilty and resulting conviction might jeopardize the taxicab driver's permit which had been previously issued to him by the Chief of Police. The Notice of Appeal states that he believed that he would have been found not guilty if he had not entered a plea of guilty and had elected to have the case proceed to trial.

Appellant did not contest the fact that he had been arrested and convicted for a violation of Vehicle Code Section 23102. Through his attorney, he made an offer of proof to the extent that the breath analyzer used to establish the degree of intoxication indicated a level of 1.6. Mr. Bitterling also indicated that his client had been advised by the public defender assigned to represent him in the criminal proceeding that since it was the Appellant's first offense, he would not receive a jail sentence nor would he lose his driver's license. The public defender advised the Appellant that is was in his best interests to plead guilty to the charge.

Mr. Bitterling testified that he had represented numerous defendants in criminal proceedings in which his clients had been charged with driving under the influence of alcohol. He testified that a 1.6 breath analyzer rating was in a range that did

not conclusively establish that the defendant was driving under the influence of alcohol. He indicated that under such circumstances, in his professional experience, the District Attorney's office would accept a plea of guilty to a lesser offense of reckless driving. Mr. Bitterling's representations coincide with the hearing officer's more limited professional experience in the defense of clients charged with violations of Section 23102 of the Vehicle Code.

Mr. Bitterling stated that his client had no prior convictions for moving violations under the California Vehicle Code. Lt. Silva introduced evidence that the Appellant had been previously convicted on February 6, 1978, for speeding. This information was not controverted by Mr. Bitterling or the Appellant.

When questioned by the hearing officer, the Appellant stated that the arrest occurred at a time when he was returning from a party driving his own vehicle.

FINDINGS AND CONCLUSIONS

As previously noted, Section 42.37 of the Sacramento City Code gives the Chief of Police discretion to revoke a taxicab driver's permit in the event that the permittee is convicted of driving while under the influence of alcohol. Thus, the Chief's authority is discretionary and under appropriate circumstances he could undoubtedly elect to allow a permittee to continue to exercise the rights granted to him by a taxicab driver's permit despite the permittee's conviction of driving while under the influence of alcohol.

Section 2.325 of the Sacramento City Code establishes the standard of review which governs the hearing officer in this

[illegible]

appeal. That section provides that the hearing officer "...shall have all the rights, duties, powers and privileges that would be vested in the City Council if the Council were conducting the hearing itself." That section also provides that the hearing officer's decision "...may include any condition that might have been lawfully imposed by the City Council."

Section 42.37 establishes the Appellate procedure which would have been utilized if the City Council had elected to hear this appeal. As I read that section, the Council is given an authority to hear the appeal de novo and to make such decisions as would be appropriate under the circumstances.

I am mindful of the obvious dangers of licensing, as taxicab drivers, individuals who have been convicted of driving while under the influence of alcohol; however, since the Council, in enacting Section 42.37, gave the Chief of Police discretionary authority to revoke or not revoke the driver's permit of a taxicab driver who has been convicted of driving while under the influence of alcohol I believe that the City Council intended that the circumstances in each case should be taken into consideration by the Chief of Police and City Council in determining whether a driver's permit should be revoked.

I have concluded that this is a proper case for the exercise of that discretion in that it appears to me that the Appellant might not have suffered conviction under Section 23102 if he had elected to contest his arrest. While I cannot condone the Appellant's activity in driving a vehicle (even when "off duty") while having consumed more than a normal amount of alcohol, I tend to believe that this is the sort of instance where able

legal representation in the criminal proceeding might have produced a plea bargain agreement with the District Attorney that would have resulted in his conviction on a lesser charge. On the other hand, Appellant's conviction did, in fact, occur and some form of disciplinary action by the Chief of Police seems warranted.

Under these circumstances, I believe the appropriate action to be taken in this matter is to sustain the decision of the Chief of Police in revoking Appellant's license but to make said revocation subject to the provision that it be stayed for a period of two years from the date of May 12, 1980. If at any time during said two-year period, Appellant is again arrested and convicted of driving while under the influence of alcohol, this stay of revocation of Appellant's taxicab driver's permit should automatically expire. If at the end of said two-year period, Appellant continues to hold an unrevoked license as a taxicab driver, the revocation should automatically be rescinded.

For the reasons stated above, the appeal of Mr. Foster is denied subject to the conditions which I have described pertaining to the stay of the Chief of Police's decision to revoke Mr. Foster's taxicab driver's permit.

DATED: July 11, 1980.

David W McMurtry

DAVID W. McMURTRY
Hearing Examiner

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915 I STREET SACRAMENTO, CALIFORNIA 95814
CITY HALL ROOM 203 TELEPHONE (916) 449-5426

LORRAINE MAGANA
CITY CLERK

June 11, 1980

Mr. David C. Foster
1000 - 24th Street, Apt. 5
Sacramento CA 95816

Dear Mr. Foster:

On June 10, 1980, the City Council determined that pursuant to Section 2.324, City Code, your appeal of the decision of the Police Chief regarding revoking your taxicab permit will involve a lengthy factfinding process which will be more appropriately accommodated by a formal hearing before a hearing examiner.

Therefore, the Council appointed David McMurtry as Hearing Examiner to hear your appeal June 24, 1980, 9:00 A.M., at the Council Chamber, 915 - I Street, 2nd floor, Sacramento, California.

Sincerely,

Anne Mason

Anne Mason
Deputy City Clerk

am

cc: David McMurtry
Police Chief
Item No. 62