

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

August 28, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-1397**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

**CITY OF WAUKESHA,**

**Plaintiff-Respondent,**

**v.**

**DANIEL L. BISHOP,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Waukesha County:  
ROGER P. MURPHY, Judge. *Affirmed.*

BROWN, J. Daniel L. Bishop is the registered agent and the secretary/treasurer for City News & Novelty, Inc. This corporation operates an adult bookstore in the City of Waukesha. The municipal court found Bishop guilty of three violations of a city ordinance after the city housing inspector reported that the viewing booths in the store did not meet local codes requiring that at least one side be left open to public space.

In this appeal, Bishop contends that the municipal court made an evidentiary error when it ruled that the corporation's application to operate an "adult oriented establishment" was a public record and that it was properly authenticated. Bishop also contends that the municipal court made a legal error when it implicitly found that he was an "operator" of the store as that term is defined in the city code. We conclude that the municipal court did not misuse its discretion when it admitted the application and that the court correctly found that Bishop was an "operator" of the store. Accordingly, we affirm the order of the circuit court which likewise found no error in the municipal court's rulings.

During the week beginning November 27, 1994, the City of Waukesha police issued Bishop three citations for violating the provision of the city code which requires that private viewing booths in adult stores:  
Have at least one side totally open to a public lighted aisle so that  
there is an unobstructed view at all times of anyone  
occupying the same.

CITY OF WAUKESHA, WIS., ORDINANCE § 8.195(9)(2)(b)2. These citations were issued after a city housing inspector found during his annual inspection that several of the viewing booths in the store had been altered; the opening to each booth was narrowed with a partition. Although the inspector gave a written warning to the on-site manager asking that the store correct the violations, the police later issued citations when a follow-up inspection revealed that the store had not corrected the problem.

In August 1995, the municipal court held a trial on these violations and found Bishop guilty. Bishop subsequently appealed to the circuit court for Waukesha county which, after consolidating the three violations, affirmed the municipal court.

We start with Bishop's claim that the municipal court erred when it admitted the corporation's permit application. This evidence specifically consisted of the application form that the corporation filled out and a "sign off" sheet that the housing inspector completed after he determined that the store met local standards. The standard we apply to this ruling is whether the court misused its discretionary authority. See *State v. Rogers*, 196 Wis.2d 817, 829, 539 N.W.2d 897, 902 (Ct. App. 1995). We measure if the trial court applied the correct legal standard and if its decision was grounded on a logical interpretation of the facts. See *id.*

The application form that the City offered into evidence was submitted by Bishop's corporation for the year beginning January 25, 1995. This form lists "City News & Novelty, Inc." as the applicant and Bishop as the "Registered Agent." Where the form requires the applicant to list all of the officers, directors and large shareholders (more than five percent), Bishop is named as the secretary/treasurer, along with one other individual who is listed as the president.

As foundation for these two documents, the city inspector explained that the "sign off" sheet that was being introduced was actually a copy of the original that he signed in January 1995 and that the original was on

file with the city clerk's office. The inspector also testified that the copy of the application which the City was now offering had been made from the original. The inspector further noted that the original document was on file with the city clerk.

Bishop makes two objections to the municipal court's decision to accept this evidence. He first argues that the court misapplied the legal standards that govern public records. He points to the statute which defines admissible public records as:

Records, reports, statements or data compilations ... setting forth  
(a) the activities of the office or agency, or (b) matters  
observed pursuant to duty imposed by law, or (c) in  
civil cases and against the state in criminal cases,  
factual findings resulting from an investigation made  
pursuant to authority granted by law ....

Section 908.03(8), STATS. Bishop argues that the City never showed how the city inspector's "sign off" sheet and his corporation's permit application fit any of the categories listed as (a), (b) and (c) in the above statute.

With regard to the inspector's report, we conclude that the municipal court properly found that it was a public record. The form was filled out by a city official pursuant to his duty to inspect the store prior to the issuance of a license. *See* § 908.03(8), STATS.

We also conclude that the corporation's permit application also fit the terms of the public records statute and that the municipal court properly admitted it. Although the applicant, not a city official, fills out the necessary information, the applicable ordinance explains that:

- (a) Any person desiring to secure a license shall make application to the City Clerk. The application shall be filed in triplicate and dated by the City Clerk. A copy of the application shall be distributed promptly by the City Clerk to the City Police Department and to the applicant.
- (b) The application for a license shall be upon a form provided by the City Clerk. An applicant for a license shall furnish the following information under oath ...

CITY OF WAUKESHA, WIS., ORDINANCE § 8.195(3). Thus, the application, once it is filled out, becomes an integral part of the city's records. The completed application is dated by the city clerk and the application (not the license) is distributed to the police. The requirement that an applicant perform the ministerial task of filling out the blanks, instead of perhaps having a public employee do it after being told what to fill in by the applicant, does not change the "public" character of this record. We therefore conclude that the municipal court did not err when it admitted the corporation's permit application as a public record.

Nonetheless, Bishop raises an alternative argument that the City did not properly authenticate these documents. Although the inspector explained to the court that he made the copies from the originals, Bishop raises the technical point that the inspector "was not asked, and therefore did not testify, whether or not Exhibits 7 and 8 were identical to the originals of the documents which he had seen in the clerk's office."

The applicable evidentiary standard provides that a public record is authenticated when it is "testified to be correct by a witness who has

compared it with the original.” Section 910.05, STATS. Here, the municipal court personally observed the inspector as he explained what these documents were and where the official copies are kept. The court also learned how the inspector made the copies which were now being offered as evidence. The court then concluded that “Testimony is that it is a correct copy of the license on file with the City Clerk.” The court's oral ruling indicates that it found the inspector's testimony credible. Contrary to Bishop's claim, even though the inspector was not specifically prompted, the court was free to infer that the inspector was verifying that these were exact copies.

Bishop's second appellate claim is that the municipal court made a legal error when it concluded that the evidence was sufficient to prove that he was an “operator” of the store and thus legally responsible for the problems at the store. The ordinance defines “operator” as:  
Any person, partnership or corporation operating, conducting,  
maintaining or owning any adult oriented  
establishment.

CITY OF WAUKESHA, WIS., ORDINANCE § 8.195(1). Bishop contends that the only evidence showing how he fit this definition was the corporation's permit application which states that he was the corporation's registered agent and that he was the secretary/treasurer. He cites to the dictionary definitions of the words “operating” and “conducting” and suggests that the common understanding of these words would lead a person to believe that the ordinance only applies to persons physically involved with running the store. Bishop argues that under no reading of the ordinance could he be liable because he is only a corporate officer.

Bishop's argument, however, ignores the strong inferences that the municipal court was free to draw from the evidence before it. The permit application informed the court that Bishop was one of only two officers in the corporation. From this, it could conclude that Bishop was involved in its actual operations. Moreover, Bishop submitted an application thereby asking the City to grant his corporation permission to open an adult bookstore. Bishop's willingness to participate in the application process further strengthens the conclusion that he was involved in the store's management activities and was not just a passive officer hidden away at headquarters. We conclude that the municipal court had sufficient evidence to find that Bishop was an operator of the store and therefore liable under the ordinance.

*By the Court.* – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4.