

# Two Methuen officers appeal suspensions for taking man's gun

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METHUEN — Two superior police officers who were suspended for seizing a man's loaded handgun while he was drinking a beer in a local bar have appealed the disciplinary action taken against them.



RYAN HUTTON/ Staff photo Methuen Police Sgt. Tod Himmer, left, and Lt. Michael Wnek, right, speak to each other privately during a joint hearing in the Methuen City Hall's Great Hall to discuss their disciplinary suspension for allegedly illegally seizing a man's gun.

Their defense attorney described the suspensions as "downright shameful" as both officers were being "proactive not reactive" in an era where gun violence is a daily occurrence.

The decision by Lt. Michael Wnek and Sgt. Tod Himmer to take the 69-year-old man's gun and ammunition on July 12 at the Irish Cottage was a "very reasonable response to a very dangerous situation," said attorney Gary Nolan, who represents the police department's superior officers union.

A three-hour hearing was held Thursday afternoon at Methuen City Hall, with the bulk of the testimony coming from Alfred Donovan, a special investigator hired by the Methuen Police Department to independently look into the handling of the incident.

Donovan, retired chief of the Tewksbury Police Department, concluded Wnek and Himmer had improperly seized the man's handgun and also violated department policy regarding cell phone use.

Both officers were subsequently suspended without pay — Wnek for five days and Himmer for three.

According to state law, it is not illegal for a legally licensed person to bring his or her weapon into a bar, as long as they are not intoxicated.

In suspension letters, Police Chief Joseph Solomon said Wnek and Himmer violated the department's professional conduct and responsibility procedure when they participated in the improper seizure of a lawfully possessed handgun.

The man in question at the Irish Cottage, who works locally as a security guard, was legally licensed to carry the weapon.

No decisions on the appeals were made yesterday. The hearing was continued until Nov. 19 and further testimony is expected.

Both Nolan and fellow defense attorney Peter Perroni repeatedly questioned Donovan on whether he felt it was "OK" for a someone to be in possession of a handgun while consuming alcohol.

Donovan, in various responses, remained steadfast — saying the practice is "lawful."

"Is it stupid for someone to consume alcohol with a loaded weapon?" asked Perroni.

"It's a lawful decision ... I don't impose my will on other people," Donovan said.

Under questioning by Nolan, Donovan said the gun holder "certainly cannot drink until intoxicated or impairment" under the confines of the law.

Donovan explained there's a difference between a person having a drink and someone "who is intoxicated and impaired."

At one point, in response to Nolan, he said "I don't like that you are trying to put words in my mouth."

Both Nolan and Perroni asked Donovan to specify how much he was being paid by the city - both for writing his report this summer and for his testimony Thursday. Hearing officer Darren Klein, however, said the details of Donovan's payment were not relevant to the hearing.

"How can you say it's not germane if you don't know the answer. If he's paid an exorbitant amount of money, we are entitled to that information," Nolan said to Klein.

Patrol officer Joseph Rynne, who responded to the Irish Cottage at 1111 Riverside Drive that day, also testified briefly at the end of Thursday's hearing.

At 4:27 that afternoon, police got a call about a man in the Irish Cottage who was in possession of firearm, he said.

Rynne spoke with the man, who described as cooperative. The man told him he had stopped at home after working as a security guard and swapped his service weapon for his personal handgun, a loaded .357 Sig Sauer.

City solicitor Kerry Jenness asked Rynne if he felt the man shouldn't be in possession of the handgun at that time.

Rynne said he felt the man was fine to drive and "I didn't have any further justification to go any further than I had."

Himmer, who was at the Irish Cottage, later informed him "they were confiscating the firearm," he said.

Nolan asked Rynne if he felt Himmer had made an inappropriate decision.

"It don't think it was unreasonable. It just wasn't my decision," he said.

When further questioned, Rynne said he felt the situation "didn't look good" and he wanted to get the man to leave and go home.

"I just felt like I didn't have enough (probable cause) to move forward," Rynne said.

The Eagle-Tribune, through a public records request, previously obtained all reports generated on the gun incident, including Donovan's full report, reports Wnek and Himmer both wrote, both officers' suspension letters, the incident report and all department emails generated on the matter.

On July 13, the man's handgun, ammunition, license to carry and holster were returned to him.

In reports, both Wnek and Himmer said they decided to seize the man's gun and other items as a preventative safety measure.

Donovan, however, said despite their intentions, they represented a police department who "improperly and without legal justification" seized the handgun "without a warrant and without probable cause that a crime had been committed."

Both Wnek and Himmer were also disciplined for using non-recorded telephone lines that night to discuss how the matter should be handled. Himmer used his cell phone to call Wnek on his cell phone.

Solomon is expected to testify on Nov. 19 when the hearing resumes at 9 a.m.

[http://m.eagletribune.com/news/two-methuen-officers-appeal-suspensions-for-taking-man-s-gun/article\\_45a0fda7-fad3-5abf-8f01-b5c39ef7c6f0.html?mode=jgm](http://m.eagletribune.com/news/two-methuen-officers-appeal-suspensions-for-taking-man-s-gun/article_45a0fda7-fad3-5abf-8f01-b5c39ef7c6f0.html?mode=jgm)