

4192

W. F. HAWIE,	)	IN THE CIRCUIT COURT OF
Plaintiff,	(	BALDWIN COUNTY, ALABAMA
Versus	)	
J. V. KITCHENS, STATE	(	AT LAW
FIRE MARSHAL OF THE	)	
STATE OF ALABAMA,	)	
Defendant.	(	Number _____

PETITION FOR ALTERNATIVE WRIT OF  
MANDAMUS

Comes the Petitioner, W. F. Hawie, and respectfully shows unto the Court as follows:

ONE

That Petitioner is a resident citizen of Baldwin County, Alabama and is over the age of twenty-one (21) years; that the Defendant, J. V. Kitchens, is over the age of twenty-one (21) years, is a resident citizen of Montgomery County, Alabama, and is the State Fire Marshal of the State of Alabama, the office of State Fire Marshal being within and part of the Department of Insurance of the State of Alabama.

TWO

That Petitioner is the owner of that certain property in the City of Fairhope, Alabama, generally known as the Fairhope Casino; that said Fairhope Casino is a large, two-story frame building adapted to use as, and used as, a place of entertainment for the use of the general public, offering such facilities as a restaurant and snack bar, bowling alleys, and the like; that Petitioner operated said Fairhope Casino as such establishment for many years and until July 3, 1959, on which date said establishment was closed to the public under the circumstances related hereinafter.

THREE

That on July 1, 1959, the Defendant, acting in his official capacity as State Fire Marshal, issued an order addressed to Petitioner at Fairhope, Alabama, condemning said Fairhope Casino as being in hazardous condition and ordering it to be closed immediately to the use for which it is adapted. A copy of said order

is attached hereto, marked Exhibit "A", and made a part hereof the same as if set out in extenso herein.

#### FOUR

That, although said order of Defendant was ostensibly delivered to Petitioner via United States Mail, Petitioner, in truth and in fact, did not receive said order via United States Mail; and Petitioner avers that the original of said order was handed to him on, to-wit, July 3, 1959, by the Chief of Police of the City of Fairhope, together with a certified copy of an official resolution adopted by the Town Council of the City of Fairhope which said resolution revoked all licenses, permits and authority to keep the said Fairhope Casino open to the public, and ordering said Fairhope Casino to remain closed "unless and until the same is put in proper state of repair suitable for and approved for re-opening by the State Fire Marshal"; that a true and correct copy of said resolution of the City of Fairhope Council is attached hereto, marked Exhibit "B", and made a part hereof the same as if set forth in extenso herein.

#### FIVE

That subsequent to his receiving the aforesaid order of the Defendant from the Chief of Police of the City of Fairhope, as aforesaid, Petitioner appealed from said order, under the provisions of Title 55 of the Code of Alabama, 1940, pertaining to such orders, in this Honorable Court, in Equity, said case on such appeal being Equity Docket Number 4638; that this Honorable Court heard said appeal and rendered a decree therein, in which the Court ordered, adjudged and decreed that the order of the Defendant of July 1, 1959, remain in full force and effect until the Appellant (Petitioner here) makes the necessary improvements to put said property in safe condition.

#### SIX

That during the course of said hearing of said appeal from said order of the Defendant, certain defects in the premises of said Fairhope Casino were pointed out, and since the date of said decree in Equity, all of said defects so pointed out have been remedied by the Petitioner; and Petitioner avers that he has, since remedying said defects, repeatedly requested and demanded that the

Defendant cause a new inspection to be made of the premises of the said Fairhope Casino, and that the Defendant issue an order permitting the re-opening of said Fairhope Casino to public use; and Petitioner avers that, although he has complied with the decree of this Honorable Court, in Equity, aforementioned, and has remedied all defects in said premises which have heretofore been pointed out to him by the Defendant or by Defendant's lawful agents, and Defendant has wholly failed and refused, and continues to refuse to cause a new inspection to be made of the premises of said Fairhope Casino, and to issue his order permitting the re-opening of said Fairhope Casino for public use.

SEVEN

Petitioner avers that, by his continuing failure or refusal to act upon the requests and demands of Petitioner aforesaid, Defendant has rendered it impossible for Petitioner to make use of the premises of said Fairhope Casino for the purposes and business to which said premises are adapted, and has thereby deprived Petitioner of his means of livelihood and has caused him extreme personal embarrassment and great financial loss; and Petitioner further shows that such failure or refusal on the part of Defendant constitutes a failure on his part to perform a ministerial duty imposed upon him as State Fire Marshall of the State of Alabama by the statutes of this state.

WHEREFORE, the premises considered, Petitioner respectfully prays that Your Honor will grant an alternative writ of mandamus or a rule nisi, directed to the said J. V. Kitchens, as State Fire Marshal of the State of Alabama, returnable to the Circuit Court of Baldwin County, Alabama, ordering and commanding the said J. V. Kitchens, as such State Fire Marshall, forthwith to issue his order permitting the re-opening of the premises known as the Fairhope Casino to use by the public, or to appear at a time to be designated by Your Honor and show cause why he should not do so; and your Petitioner respectfully prays for any other and further relief, and for such other and further orders and judgments to which he may be entitled under the facts above alleged.

  
Petitioner

STATE OF ALABAMA

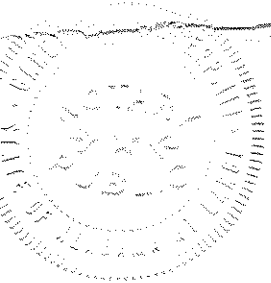
COUNTY OF MOBILE

Before me, Garet Van Antwerp, III, a Notary Public in and for said State and County, this day personally appeared W. F. Hawie, whose name is signed to the foregoing petition and who is known to me, who, being by me first duly sworn, on oath deposed and said that he is the Petitioner in the foregoing Petition, that he has knowledge of the facts averred therein, and that such facts are true and correct.

W. F. Hawie  
Affiant

SUBSCRIBED and SWORN TO before me  
this 20<sup>th</sup> day of February, 1960.

[Signature]  
Notary Public, State of Alabama at Large



FILED  
Feb 24 1960  
ALICE I. DUCK, CLERK  
REGISTER

No. 4192

339

W. F. Harvie

VS.

J. V. Kitchens,  
State Fire Marshall

RECEIVED BY OFFICE  
FEB 26 1960  
M. S. BUTLER, Sheriff

Received Harvie day of Feb 1960  
and on \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
I served a copy of the within St. C  
on J. V. Kitchens

By service on \_\_\_\_\_  
The Sheriff claims 2  
miles at 10c per mile for a total  
of \$ 2.00 By \_\_\_\_\_  
M. S. Butler, Sheriff  
EXECUTED BY SERVING A  
COPY OF THE WITHIN on

J. V. Kitchens  
State Fire Marshall  
State of Ala

This the 26 day of Feb 1960  
M. S. BUTLER  
Sheriff Montgomery County  
By Ramond...  
Deputy Sheriff

FILED

FEB 24 1960

ALICE J. DUCK, CLERK  
REGISTER

