

ISSUED MARCH 13, 1996

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA

JARNAIL SINGH GILL and	)	AB-6551
JASWINDER K. GILL)	
dba Economy Food Mart	)	File: 20-276670
749 South Shafter Avenue	)	Reg: 95032301
Bakersfield, CA 93263)	
Appellants/Licensees,	)	Administrative Law Judge
	)	at the Dept. Hearing:
v.	)	Humberto Flores
)	
THE DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	February 8, 1996
	)	Los Angeles, CA

Jarnail Singh Gill and Jaswinder K. Gill, doing business as Economy Food Mart, (appellants), appealed from a decision of the Department of Alcoholic Beverage Control¹ which denied appellants' petition to modify a condition on their off-sale beer and wine license limiting the hours of sale for alcoholic beverages, in accordance with Business and Professions Code §§23800, 23801, and 23803.

Appearances on appeal included Jarnail Singh Gill and Jaswinder K. Gill, appellants; and Jonathon E. Logan, counsel for the department.

¹The decision of the department dated July 20, 1995 is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellants' license was issued December 21, 1993. At the time of issuance, the department determined that conditions were necessary to insure the quiet enjoyment of residents located within 100 feet of the premises.

Appellants subsequently petitioned the department to modify the condition involving hours of sale to allow them to sell alcoholic beverages until 2 a.m. instead of the present 9 p.m. restriction. The petition was denied on March 27, 1995, and appellants requested a hearing before the department.

An administrative hearing was held on June 23, 1995, at which time oral and documentary evidence was received. At the hearing, it was determined that not only did the same circumstances still exist that prompted the department to impose the conditions originally, but the number of residences in the area had increased significantly since the license was issued, and that the California Code of Regulations, Title 4, §61.4 (rule 61.4) remained applicable.

Subsequent to the hearing, the department issued its decision which denied appellants' petition to modify the condition on the license. Appellants filed a timely notice of appeal.

In their appeal, appellants raised the issue that there was no valid reason to continue the restriction limiting the times during which alcoholic beverages could be sold.

DISCUSSION

Appellants contended that there was no valid reason to continue the restriction limiting the times during which alcoholic beverages could be sold.

The authority of the department to impose conditions on a license is set forth in Business and Professions Code §23800. The test of reasonableness as set forth in §23800(a) is that "...if grounds exist for the denial of an application...and if the department finds that those grounds [the problem presented] may be removed by the imposition of those conditions..." the department may grant the license subject to those conditions. Section 23801 states that the conditions "...may cover any matter...which will protect the public welfare and morals...."

We therefore view the word "reasonable" as set forth in §23800 to mean reasonably related to resolution of the problem for which the condition was designed. Thus, there must be a nexus, defined as a "connection, tie, link,"² in other words, a reasonable connection between the problem sought to be eliminated, and the condition designed to eliminate the problem.

Appellants signed a petition for conditional license on October 8, 1992, consenting to five conditions which were thereafter placed on their license. One of the grounds for the imposition of the conditions was that there were residents within 100 feet of the premises and the California Code of Regulations, Title 4, §61.4 (rule 61.4) prohibited the issuance of the license without the conditions.

In the present matter, the record shows that the department denied appellants' request to modify the condition limiting the hours of sale of alcoholic beverages on the

²See Webster's Third New International Dictionary, 1986, page 1524.

ground that the circumstances which caused the original imposition of the conditions continued to exist--there were residents still residing within 100 feet of the premises.

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Chris Parlier, an investigator for the department, testified at the administrative hearing that there were residents within 100 feet of the premises [R.T. 8-9, 11].

Therefore, rule 61.4 applied.³ Apparently, rule 61.4 is based on an implied presumption that a retail alcoholic beverage operation in close proximity to a residence will more likely than not disturb residential quiet enjoyment.

The United States Supreme Court has declared its concern for the tranquility of residential areas and the need to be free from disturbances. Carey v. Brown (1980) 447 U.S. 455, 470-471, 100 S.Ct. 2286, 2295-2296, 65 L.Ed.2d 263.

Other "locational" cases involving protection of residential neighborhoods include Young v. American Mini Theaters, Inc. (1976) 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed2d 310, and Matthews v. Stanislaus County Board of Supervisors (1962) 203 Cal.App.2d 800, 21 Cal.Rptr. 914.

In the "residential quiet enjoyment"/"law enforcement problem" case of Kirby v. Alcoholic Beverage Control Appeals Board & Schaeffer (1972) 7 Cal.3d 433, 441, 102 Cal.Rptr. 857, the Supreme Court said "...the department's role in evaluating an application...is to assure that public welfare and morals are preserved from probable

³Rule 61.4 essentially states that the department may not issue a license if there are residents within 100 feet of the premises, unless the applicant for the license proves that one of the exceptions to the rule apply (a factor not applicable in the present matter).

impairment in the future...[and] in appraising the likelihood of future harm...the department must be guided to a large extent by past experience and the opinions of experts." Although the case was not a rule 61.4 case (the closest residence was about 150 feet away), the Kirby/Schaeffer court upheld the department's determination that issuance of the license sought therein would, inter alia, interfere with nearby residential quiet enjoyment even though no nearby resident had voiced opposition to the license. The court took note of substantial evidence on both sides of the issue and concluded that the expert witness testimony of the county sheriff was sufficient to support the department's crucial findings. While the above-cited cases concerned original application matters, they do emphasize the duty of the department to protect residential quiet enjoyment, which, as in the present matter, directly affects modification of conditions which were imposed due to rule 61.4.

We determine that the findings of the department's decision were supported by substantial evidence.

CONCLUSION

The decision of the department is affirmed.⁴

RAY T. BLAIR, JR., CHAIRMAN
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL

⁴This final order is filed as provided by Business and Professions Code §23088, and shall become effective 30 days following the date of this filing of the final order as provided by §23090.7 of said statute for the purposes of any review pursuant to §23090 of said statute.

APPEALS BOARD⁵

⁵Member John B. Tsu abstained.