

ISSUED MAY 15, 1997

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

CARMEN MEZA and JOSE RAMIREZ MEZA	)	AB-6646
dba Recreation Pool Hall)	
612 Rio Frio Street	)	File: 40-307428
Mendota, CA 93640,	)	Reg: 95034122
Appellants/Applicants,)	
)	
v.	)	Administrative Law Judge
	)	at the Dept. Hearing:
STEVE MARGARIAN	)	Jeevan S. Ahuja
Fresno County Sheriff)	
Protestant, and	)	Date and Place of the
	)	Appeals Board Hearing:
DEPARTMENT OF ALCOHOLIC	)	March 5, 1997
BEVERAGE CONTROL	)	San Francisco, CA
Respondent.)	
_____)	

Carmen Meza and Jose Ramirez Meza (appellants), appeal from a decision of the Department of Alcoholic Beverage Control¹ which denied their application for an on-sale beer license on the ground its issuance would create or aggravate a law enforcement problem, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, in that it would give rise to a

¹ The decision of the Department, dated March 7, 1996, is set forth in the appendix.

violation of Business and Professions Code §23958.

Appearances on appeal include appellants Carmen Meza and Jose Ramirez Meza, appearing through their counsel, Nicholas F. Reyes; the Department of Alcoholic Beverage Control, appearing through its counsel, Thomas M. Allen; and protestant Steve Magarian, Sheriff of Fresno County, appearing through Sergeant Carl Coffman.

FACTS AND PROCEDURAL HISTORY

Appellants filed an application with the Department on April 7, 1995, for the issuance of an on-sale beer license. The application was protested by Steve Magarian, Sheriff of Fresno County. Following its investigation, the Department denied the application. Appellants requested a hearing, which was held on January 30, 1996. At that hearing, testimony was presented concerning protestant's claim that issuance of the license would tend to create or aggravate a law enforcement problem. Thereafter, the Administrative Law Judge (ALJ) issued his proposed decision, which denied the application on those grounds, and the Department adopted that decision on March 7, 1996. Appellants thereafter filed a timely notice of appeal.

In their appeal, appellants raise the following issue: the evidence is insufficient to support the decision of the Department that issuance of the license would be contrary to public welfare and morals.

DISCUSSION

Appellants contend that the evidence adduced at the hearing is insufficient to

support the decision.

"Substantial evidence" is relevant evidence which reasonable minds would accept as a reasonable support for a conclusion. (Universal Camera Corporation v. National Labor Relations Board (1950) 340 US 474, 477 [71 S.Ct. 456]; Toyota Motor Sales USA, Inc. v. Superior Court (1990) 220 Cal.App.3d 864, 871 [269 Cal.Rptr. 647].)

When, as in the instant matter, the findings are attacked on the ground that there is a lack of substantial evidence, the Appeals Board, after considering the entire record, must determine whether there is substantial evidence, even if contradicted, to reasonably support the findings in dispute. (Bowers v. Bernards (1984) 150 Cal.App.3d 870, 873-874 [197 Cal.Rptr. 925].)

Appellate review does not "...resolve conflict[s] in the evidence, or between inferences reasonably deducible from the evidence ..." (Brookhouser v. State of California (1992) 10 Cal.App.4th 1665, 1678 [13 Cal.Rptr. 658].)

The Department is authorized by the California Constitution to exercise its discretion whether to deny, suspend, or revoke an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting or the continuance of such license would be contrary to public welfare or morals.

The court in Koss v. Department of Alcoholic Beverage Control (1963) 215 Cal.App.2d 489 [30 Cal.Rptr. 219, 222], enumerated several considerations the

Department may consider in determining if a license would endanger welfare or morals:

"the integrity of the applicant as shown by his previous business experience; the kind of business to be conducted on the licensed premises; the probable manner in which it will be conducted; the type of guests who will be its patrons and the probability that their consumption of alcoholic beverages will be moderate; the nature of the protests made"

The scope of the Appeals Board's review is limited by the California Constitution, statute, and case law. In reviewing a Department decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but must determine whether the findings of fact made by the Department are supported by substantial evidence in light of the whole record, and whether the Department's decision is supported by the findings.²

The evidence in this matter in support of the determination that issuance of the license would tend to create a law enforcement problem rests almost entirely on conduct which occurred outside or across the street from the premises, but which affects the premises. The premises were last licensed in 1985. The applicants themselves live across the street within 100 feet of the premises, a pool hall.

The City of Mendota contracts with the Fresno County Sheriff's Department for law enforcement services [RT 13]. The current contract provides for the presence of one deputy in the City of Mendota for an average of 12 hours per day. This time

²The California Constitution, article XX, § 22; Business and Professions Code §§23084 and 23085; and Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control (1970) 2 Cal.3d 85 [84 Cal.Rptr. 113].

period was reduced from the previous 24 hours per day [RT 55]. Department investigator Suzuki concluded that, because of the report he received regarding shortage of deputies and the Sheriff's Department's belief that a crime problem existed in the City of Mendota, the application should be denied because issuance of the license would tend to aggravate a crime problem, and he so recommended [RT 19].

Sgt. Carl Coffman of the Fresno County Sheriff's Department testified that, in the 2,500 square mile area of the patrol division under his supervision, the western portion of Fresno County, which includes the City of Mendota, 28% of the calls for service, 45% of the arrests and 541 "priority 1 calls" involved the City of Mendota [RT 57-60]. However, he was unable to testify to the extent any relationship existed between these statistics and the consumption of alcohol.

Detective Cynthia Knight testified about an investigation conducted by the Sheriff's Department in 1993 involving prostitution activity directly across the street from appellants' premises [RT 80-81]. She testified that women were observed crossing the street to the pool hall, with beer in their hands, and returning across the street accompanied by males, also carrying beer, who had been in or just outside the pool hall [RT 81-82, 88]. One or more of these women were later arrested for prostitution [RT 82, 85, 89]. On at least one occasion, an undercover investigator was led from the pool hall to the other side of the street for prostitution services [RT 81]. According to Detective Knight, the prostitution activity coincides with the harvest

season, and the return of migrant workers [RT 93]. During the same investigation, Detective Knight on numerous occasions observed men on the sidewalk in front of the pool hall drinking beer [RT 90].

Detective Mike Flores, employed 13 years by the Sheriff's Department, testified that in September 1995, he saw females cross the street to the pool hall,

"while consuming alcohol, having conversations with people who are around the pool hall also consuming alcohol, and some of the persons -- the male persons from the pool hall go across the street and back to the residence continuing drinking beer and going inside females' apartments and coming back out, and congregating around the corner of the pool hall. [RT 98].

The Department offered statistical evidence through Deputy Sheriff Les Van Meter, a systems specialist for the Sheriff's Department, which purported to show the incidence of law enforcement activity in the vicinity of appellants' premises. On cross-examination, Van Meter acknowledged that none of the entries on the exhibit (Exhibit 3) indicated whether they were alcohol related. Consequently, this Board is disinclined to attribute any importance to this data.

Appellants stress that their operation of the pool hall has been without incident, that they are qualified applicants, that they cannot be held responsible for activities occurring elsewhere, and that the City of Mendota has concluded that the sale of alcohol within the building is needed. The Department, on the other hand, stresses the evidence of prostitution activity and the fact that the premises had a prior history of violation, and argues that its decision is a reasonable application of its discretion given

all the circumstances.

There was evidence supporting the determination that issuance of the license would tend to aggravate an existing crime problem. While the prostitution activity was "seasonal," its existence and the degree to which it might depend upon the pool hall for a source of clientele are certainly appropriate factors for the Department to consider.

The crime statistics were of dubious value, both as a result of their lack of focus on appellants' premises, and the apparent total lack of any evidence of the degree of relationship between the reported incidents and the consumption of alcohol.³ For these reasons, we are disinclined to attribute any weight to these statistics.

The memorandum from the City of Mendota (Exhibit A) purporting to demonstrate necessity for the issuance of a license is also of little probative value. The city apparently believes issuance of the license will result in the elimination of the public drinking⁴ by confining the beer-drinking to the interior of the pool hall.

³ The Department cites Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board (1982) 133 Cal.App.3d 814 [184 Cal.Rptr. 367], for the proposition that it does not have to show a statistical connection between the high number of service calls for the City of Mendota and the consumption of alcohol. That case involved the issue of undue concentration, an issue not really involved here.

⁴ The city's concern, expressed in its memorandum, is that:

"pool hall customers continuously purchase alcohol across the street at a mini-mart and consume it in front of the pool hall building. This public drinking and loitering is a nuisance to the public. ..."

However, given the lure of the illicit activities which, according to the evidence, take place directly across the street, at least during the harvest season, the city's hope may be unjustified, and the public nuisance would remain or, if the Department is correct, become even worse.

As the Department notes in its brief, the loitering and consumption of alcohol in front of appellants' premises and the prostitution occurring across the street are interrelated. Thus, the sale of alcohol at the pool hall could aggravate the situation and increase the law enforcement problem. We draw this conclusion because, despite appellants' apparent sincerity, which we have no reason to doubt, there is no assurance that the issuance of a license would reduce the loitering and public beer drinking in the immediate area of appellants' premises, nor any assurance that appellants could effectively prevent it.

This is a case where the Department, drawing largely upon its expertise, has made a judgment call, drawing largely upon its expertise. This Board is unwilling to say that the Department abused its discretion in making the findings that it did:

"Where the decision is the subject of choice within reason, the Department is vested with the discretion of making the selection which it deems proper; its action constitutes a valid exercise of that discretion; and the Appeals Board ... may not interfere Where the determination of the Department is one which could have been made by reasonable people, the Appeals Board or the courts may not substitute a decision contrary thereto, even though such decision is equally or more reasonable in the premises."

(Koss v. Department of Alcoholic Beverage Control, *supra*, at 223.)

Since we cannot say that the Department has acted unreasonably, we must affirm its decision to deny the issuance of the requested license.

CONCLUSION

The decision of the Department is affirmed.⁵

BEN DAVIDIAN, CHAIRMAN
RAY T. BLAIR, JR., MEMBER
JOHN B. TSU, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁵ This final order is filed as provided in 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.