

ISSUED MARCH 21, 2000

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

GREGORY G. CAMPBELL	)	AB-7492
1255 Mission Street	)	
San Miguel, CA 93451,	)	File: 48-347059
Appellant/Applicant,	)	Reg: 99046315
	)	
v.	)	Decision by Letter
	)	
DEPARTMENT OF ALCOHOLIC	)	Date and Place of the
BEVERAGE CONTROL,	)	Appeals Board Hearing:
Respondent.	)	January 20, 2000
	)	Los Angeles, CA

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Gregory G. Campbell (applicant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which denied his request to amend or change his previous application for an on-sale general public premises license to an application for an on-sale general bona fide eating place license.

Appearances on appeal include applicant Gregory G. Campbell and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

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<sup>1</sup>The decision of the Department, a letter dated August 27, 1999, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

On September 24, 1998, applicant entered the general priority license drawing for San Luis Obispo County, pursuant to Business and Professions Code §§23817, 23820, and 23821.<sup>2</sup> The priority application states that if the drawing is in applicant's favor, he may seek an on-sale general public premises license (a bar-type license), or an on-sale general eating place license (a restaurant-type license).

Applicant apparently was successful in this lottery, for, on December 3, 1998, he filed an application for an on-sale general public premises license. The Department investigated the application pursuant to §23958, and on April 15, 1999, gave notice that the application was denied, alleging there was one residence within 100 feet of the premises and that normal operation of the premises would interfere with the quiet enjoyment of nearby residences. The Department also stated that issuance of the public premises license would be contrary to §23793, which states, essentially, that applicant must show "substantial public demand."

On April 26, 1999, the Department acknowledged applicant's request for a hearing. At least one protestant filed a protest against issuance of the license, and the matter was set for hearing on July 15, 1999, which was continued.

From May 3 through August 30, 1999, applicant sent to the Department a series of demands for discovery, demanded a special hearing on the question of what is "substantial public demand," and also demanded a hearing as to the denial

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<sup>2</sup>All references to code sections shall be to the Business and Professions Code, unless otherwise indicated.

to change the type of the application. The Department denied by letter, a copy of which is found in the appendix, the request to amend or allow another application to be filed for an on-sale general eating place license.

On October 12, 1999, David W. Sakamoto, an attorney for the Department, sent a letter to applicant specifying details as to the refusal of the change of application type, stating that no hearing on the change was forthcoming, and stating the letter was a formal denial of the request to change the applied-for license.

Applicant thereafter filed a notice of appeal. In his appeal, he raises the issue that he was arbitrarily prohibited from amending or changing his application to an on-sale general eating place license.

#### DISCUSSION

Contrary to the argument of the Department, the Appeals Board is empowered to consider an appeal where the Department denies the applicant's request to change the type of license application:

"When any person aggrieved thereby [actions of the Department to deny a license] appeals from a decision of the department ... denying ... any license ... the [Appeals] board shall review the decision ...." (Cal. Const. art. XX, §22.) "As used in this article 'decision' means any determination of the department ... affecting a license which may be appealed to the board under Section 22 of Article XX of the Constitution." (Bus. & Prof. Code §23080.)

The Appeals Board in past cases has taken appeals from letter denials of the Department, in appropriate matters, the present matter being included.

The first letter to applicant denying his request to change the type of license lists reasons for the denial as: notification to residents, notification of local officials

within certain time constraints, and a major change in the characteristics of the proposed operation. These reasons are illusory, and convey the image of some major burden to the Department if the change of type of license were granted. The essential investigation has been concluded, and the major task needed would be the payment of additional fees for the new application.

Mr. Sakamoto's letter states that it was a formal denial of the request to change the application. The Department attorney's letter also states that "It [the Department] has spent considerable time and effort investigating that application [the original application for the bar-type] and has made its [Department's] recommendation." The whole of the rest of the letter addresses the irrelevant fact that the Department need not allow for an evidentiary hearing on the denial of the change.

The Department's brief states that applicant has cited no authority that the Department is compelled to grant the request, and states: "Thus, in the absence of some specific statutory authority to the contrary, the Department can properly exercise its [sic] sound discretion in this instance and disallow the requested transformation of application." However, the Department's own internal Instructions manual [L-159] states: "When an applicant for an on-sale license for a bona fide public eating place or on-sale license for public premises changes his application from one type to the other, all notifications, posting and publishing requirements of Chapter 6, Article 2, must be repeated."

A full reading of the record such as it is, shows actions on the part of the Department which appear arbitrary, notwithstanding the apparent highly active actions of applicant toward the Department. Since the manuals of the Department and the record in the present matter appear to indicate that the requested new application would be more suited to the area, than the application presently on file, we see no apparent reason for the Department to disregard its own manual of instructions and continue its arbitrary refusal to accept a new and different application under the tangible priority drawing-right applicant possesses.

#### ORDER

The Department's Motion to Dismiss the appeal is denied. The decision of the Department to withhold the right of applicant to change his application to a general bona fide eating place license, is reversed, and the matter is remanded to the Department to take necessary actions consistent with the views expressed herein.<sup>3</sup>

TED HUNT, CHAIRMAN  
RAY T. BLAIR, JR., MEMBER  
E. LYNN BROWN, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>3</sup>This final order is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this order as provided by §23090.7 of said code.

Any party, before this final order becomes effective, may apply to the appropriate court of appeal, or the California Supreme Court, for a writ of review of this final order in accordance with Business and Professions Code §23090 et seq.