

ISSUED NOVEMBER 13, 1996

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

FOOTHILL CHEVRON, INC.	)	AB-6612
dba Chevron Car Wash & Food Mart)	
14089 Foothill Boulevard	)	File: 20-305969
Sylmar, CA 91342,	)	Reg: 95033692
Appellant/Applicant,)	
	)	Administrative Law Judge
v.	)	at the Dept. Hearing:
	)	Sonny Lo
CHIEF WILLIE WILLIAMS,)	
Los Angeles Police Department, and	)	Date and Place of the
	)	Appeals Board Hearing:
DEPARTMENT OF ALCOHOLIC	)	July 1, 1996
BEVERAGE CONTROL,	)	Irvine, CA
Respondents.)	
_____)	

Foothill Chevron, Inc., doing business as Chevron Car Wash & Food Mart (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which denied the issuance of an off-sale beer and wine license to appellant, as issuance of the license would tend to create a law enforcement problem, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, and Business and Professions Code §23958.

Appearances on appeal include appellant Foothill Chevron, Inc., appearing

¹The decision of the Department dated November 22, 1995, is set forth in the appendix.

through its counsel, Ralph B. Saltsman; the Department of Alcoholic Beverage Control, appearing through its counsel, David Sakamoto; and protestant, Chief Willie Williams, through his representative, Sergeant Kris Pitcher.

FACTS AND PROCEDURAL HISTORY

Appellant filed an application for an off-sale beer and wine license with the Department on February 22, 1995. The Department denied the application on August 17, 1995, and appellant requested a hearing. Protests were also filed against the issuance of the license.

An administrative hearing was held on November 1, 1995, at which time oral and documentary evidence was received. At that hearing, testimony was received concerning the presence of two gangs in the immediate vicinity of the proposed premises, and that there were large numbers of crimes committed in the area which including robberies, rapes, assaults, and drive-by shootings.

Subsequent to the hearing, the Department issued its decision which denied the application for the applied-for license and sustained the protest filed by the Chief of Police of the City of Los Angeles,² upon the determination that the issuance of the license would tend to create a law enforcement problem. Appellant thereafter filed a timely notice of appeal.

In its appeal, appellant raises the issue that the crucial findings of the Department are not supported by substantial evidence.

²The protests filed by Assemblyman Richard Katz and Patricia Cane were dismissed as abandoned.

DISCUSSION

Appellant contends that the crucial findings of the Department are not supported by substantial evidence.

"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, 95 L.Ed. 456, 71 S.Ct. 456, and 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).

Appellant argues that the City of Los Angeles had issued its permits allowing for the sale of alcoholic beverages and other commodities. However, it is the Department, and not the City of Los Angeles through its conditional use permits or the Appeals Board, which is authorized by the California Constitution to exercise its discretion whether to grant or deny an alcoholic beverage license, if the Department shall reasonably determine for "good cause" that the granting of such license would be

contrary to public welfare or morals.

The Department based the denial of the license on the ground that issuance of the license would tend to create a law enforcement problem in accordance with Business and Professions Code §23958 which in pertinent part states: "The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem...."

Scott Kennedy, a police officer with the Los Angeles Police Department, testified that there was heavy gang activity in the immediate area of the premises. Criminal activity of the gangs included such activities as robbery, rape, murder, narcotics transactions, drive-by shootings, and assaults. It was the experience of the officer that the gang members were under the influence of alcohol or drugs during their commission of the crimes [R.T. 25, 27, 29-30]. The officer was personally familiar with a 7-Eleven store across the street from the proposed premises, where on occasions it had been robbed for alcoholic beverages on what is called a "smash-and-run" type robbery [R.T. 34].

Sergeant Kris Pitcher of the Los Angeles Police Department testified as to over 240 incidents of criminal activity along Foothill Boulevard and the immediate area of the premises' location, which included robberies, murders, assaults with deadly weapons, and burglaries [R.T. 41].

There was substantial evidence in the record to show that gangs congregated near the premises, and some of their criminal acts were perpetuated near the area of the premises. The scope of the Appeals Board's review is limited by the California

Constitution, by statute, and by case law. In reviewing a Department's decision, the Appeals Board may not exercise its independent judgment on the effect or weight of the evidence, but is to 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.³

We therefore conclude that there was a nexus between the premises and the crimes, in that evidence tended to show that other licensed premises had the problems testified to which the Department would consider illegal and dangerous. While the Department may not remove an innocent licensee caught in the sea of crime around that licensee, the Department may prohibit the addition of one more source of alcohol in a given crime-impacted area. This then is a question of discretion which only the Department as authorized by the State Constitution may decide.

CONCLUSION

The decision of the department is affirmed.⁴

RAY T. BLAIR, JR., CHAIRMAN

³The California Constitution, Article XX, Section 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].

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.

JOHN B. TSU, MEMBER
BEN DAVIDIAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD