

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

BEVERLY J. ROHRER, Ed.D.	)	AB-6563
Redondo Beach unified School District)	
Appellant/Protestant,	)	File: 41-304644
	)	Reg: 95032556
v.)	
	)	Administrative Law Judge
FERRANTE ROGERS, INC.	)	at the Dept. Hearing:
dba La Salsa South Bay	)	W. F. Byrnes
2790 Manhattan Beach Blvd.)	
Redondo Beach, CA 90278	)	Date and Place of the
Respondent/Applicant, and	)	Appeals Board Hearing:
	)	April 3, 1996
DEPARTMENT OF ALCOHOLIC	)	Los Angeles, CA
BEVERAGE CONTROL,)	
Respondent.)	
_____)	

Beverly J. Rohrer, Ed.D., in behalf of the Redondo Beach Unified School District (protestant), appealed from a decision of the Department of Alcoholic Beverage Control¹ which overruled the protest against the application of Ferrante Rogers, Inc., doing business as La Salsa South Bay (applicant) for an on-sale beer and wine license, on the grounds that protestant had not shown that issuance of the license would adversely interfere with the functions of a nearby school.

¹The decision of the department dated August 17, 1995 is set forth in the appendix.

Appearances on appeal included applicant Ferrante Rogers, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon; the Department of Alcoholic Beverage Control, through its counsel, David B. Wainstein; and protestant Beverly J. Rohrer, Ed.D., appearing through her counsel, Joan Birdt.

FACTS AND PROCEDURAL HISTORY

Applicant filed for an on-sale beer and wine license with the department on January 5, 1995. Thereafter, on January 23, 1995, protestant filed a protest in opposition to the issuance of the license. Apparently the department did not deny the license application, but did set the matter for an administrative hearing to consider the issues raised by the protest.

The hearing was held on July 13, 1995, at which time oral and documentary evidence was received. At that hearing, it was determined that while the premises was located in the immediate vicinity of a school, normal operation of the premises as licensed would not interfere with the functions of the school.

Subsequent to the hearing, the department issued its decision incorporating the determinations and overruling the protest, which effectively removed any impediments to the issuance of the license. Protestant then filed a timely notice of appeal.

In her appeal, protestant raised the following issues: (1) the findings of the department were not supported by substantial evidence; and (2) the department disregarded the public welfare and morals issue.

DISCUSSION

Protestant contended that the findings were not supported by substantial evidence, arguing that the department ignored substantial evidence of adverse impact on the school's services.

It is the department, and not the appeals board, which is authorized by the California Constitution to exercise its discretion whether to issue or deny an alcoholic beverage license, if the department shall reasonably determine for "good cause" that the granting of the license would not be, or the denial of such license would be, contrary to public welfare or morals.

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. The appeals board is also authorized to determine whether the department has proceeded in the manner required by law, proceeded in excess of its jurisdiction (or without jurisdiction), or improperly excluded relevant evidence at the evidentiary hearing.²

The term "substantial evidence" is defined as 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,

²The 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.

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 present 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 issues before the department at the time of the administrative hearing came from the protestant's protest document:³ (1) safety and security of students' learning environment can be compromised by the issuance; and (2) failure to receive notice of intent to sell.

Tom Cox, assistant superintendent of administrative services for the protestant, testified at the hearing in behalf of the protestant that there was a plan to turn the school from the present usage of education for handicapped students to an elementary

³The department's Instructions, Interpretations and Procedures Manual, page L435 states in part: "Since the protest becomes a statement of issues, it is necessary that the statement specify the statutes and rules with which the applicant must show compliance, and, in addition, must specify any particular matters which are to [be] made issues at the public hearing." See also the matter of Chambers v. Prestige Stations (1992) AB-6247.

Additionally, the notice of hearing on protest sent to all parties on June 6, 1995, set forth the general welfare and morals provisions of the California Constitution, Article XX, Section 22, and Business and Professions Code §23958, as additional issues to be considered.

school. The plan could be implemented from one to ten years hence [R.T. 27, 32, 37].

Dr. Rohrer, the protestant, testified that the board was strongly opposed to a license near a school premises. She was concerned about the well-being of students arriving at and leaving school, and stated that alcoholic consumption was contrary to the curriculum [R.T. 47-49].

There was no substantial evidence as to any impact that the issuance of the license would have on school children. The present (handicapped) school children are bussed to the school, but that could change if the school district created an elementary school at the site. Whether there are regular students or handicapped students at the school, the license was for a small Mexican eat in/take out fast-food operation; take-out of alcoholic beverages was prohibited by a condition on the license.

The protestant argued that the department did not conduct a thorough investigation. The argument is that the department failed to adhere to the local zoning laws. The record showed that a resolution was passed by the local government body prohibiting "liquor stores" in the immediate area around the school. The resolution was against off-sale type premises, not the type of applied-for license, which is an on-sale type.

Appellant argued that the department failed to follow the notice provisions of the Business and Professions Code. While protestant is the owner of the property, the "resident" of the property was not the protestant, but the County Office of Education, which runs the present school operation under a lease of the premises. Protestant had only one employee at the school, a janitor [R.T. 32-33]. The department contacted Dr.

Denise Marrs, the vice-principal at the school, who said she did not see a problem with the issuance of the license. Notices were sent to residents within 500 feet of the premises as provided by law, but not to commercial establishments or schools. School officials were contacted personally.

Protestant also argues that the chief of police signed a petition, along with others, against the issuance of the license. The chief's personal views undoubtedly were considered by the administrative law judge, and were a part of the record on review. However, the chief of police, in his official capacity, did not file a protest against the issuance of the license.

We conclude that there was substantial evidence to support the findings.

II

Protestant contended that the department disregarded the public welfare and morals issue.

It is the department which has been given the discretion to determine whether a license will adversely impact the public welfare and morals. The determination of the department was that issuance, as conditioned, would not be contrary to the public welfare and morals.

The case of Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control ((1970) 2 Cal.3d 85, 99, 84 Cal.Rptr. 113)--a case factually dissimilar, defined the term "public welfare and morals" as follows:

"...It seems apparent that the 'public welfare' is not a single, platonic archetypal idea, as it were, but a construct of political philosophy embracing a wide range of goals including

the enhancement of majority interests in safety, health, education, the economy, and the political process, to name a few. In order intelligently to conclude that a course of conduct is 'contrary to the public welfare' its effects must be canvassed, considered and evaluated as being harmful or undesirable...."

Protestant did not provide any substantial evidence as to how this particular license would reasonably adversely affect the present student body (or any future change in the student makeup) of the school.

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The conditions imposed on the license prohibited outside advertisement (or inside advertisement that can be seen from the outside), prohibited sales of alcoholic beverages to be removed from the premises, and required that beverages must be sold in conjunction with food. The department determined that the conditions imposed on the license were sufficient to control sales at the premises.

The alleged lack of not being able to produce other evidence at the hearing did not prejudice protestant. That evidence was not relevant to applicant's intended operation--the effects of alcohol on children, a possible increase in alcohol consumption, and crime caused by the close proximity of the premises to the school, crime in general, and alcohol-related crime in the area.

CONCLUSION

The motion to remand the matter for further proceedings due to newly discovered evidence is denied.

The decision of the department is affirmed.⁴

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

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.