

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

AB-8209

File: 21-295689 Reg: 03055186

CIRCLE K STORES, INC. dba Circle K 5235
9859 Topanga Canyon Boulevard, Chatsworth, CA 91311,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: September 2, 2004
Los Angeles, CA

ISSUED NOVEMBER 9, 2004

Circle K Stores, Inc., doing business as Circle K 5235 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for its clerk, Akila Jayawardena, having furnished beer to Scott Parisen and Jacob Hoffert,² both 19 years of age, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph Barat Saltsman and Stephen Warren Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Matthew G. Ainley.

¹The decision of the Department, dated November 6, 2003, is set forth in the appendix.

² We have used the spelling provided by Hoffert. The accusation referred to him as "Huffert."

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale general license was issued on July 15, 1994. Thereafter, the Department instituted an accusation against appellant charging that it sold, furnished, or gave alcoholic beverages (beer) to Parisen (Count 1) and Hoffert (Count 2.) An administrative hearing was held on October 8, 2003, at which time oral and documentary evidence was received. At that hearing, the Department presented the testimony of David Duran, a Department investigator, Michael Krieger, the purchaser of the beer, and Jacob Hoffert and Scott Parisen, the minors named in the accusation. Mohammad Latif, Circle K's assistant store manager, and Tony Bashkar, a district manager for Conoco-Phillips Stores, Circle K's parent company, also testified.

Subsequent to the hearing, the Department issued its decision which sustained the charge of the accusation. The transaction, which the administrative law judge (ALJ) described as unusual, was found to be one in which the clerk furnished the beer to the two minors, Parisen and Hoffert, even though Krieger was the actual purchaser.

Appellant thereafter filed a timely notice of appeal. In its appeal, appellant contends that the findings are insufficient to support the decision.

DISCUSSION

Appellant focuses its attack on one paragraph of Finding of Fact 10, which states:

Concededly, the facts in this case are somewhat unusual and do not comport with the classical straightforward 2 party clerk/minor transaction. However there is enough evidence in the record to have put the clerk on notice that the beer was being purchased for the entire group, and the conduct of the minors in actively bringing cans of beer to the counter for purchase, and the turning over of money by Parisen to Krieger all in full view of the clerk, establishes a prima facie case of furnishing.

Appellant describes this finding as “equating the presence of minors to furnishing minors.” (App. Br., at page 6.)

Appellant has not challenged any of the findings made by the administrative law judge, other than for its characterization of Finding 10. An examination of the findings applicable to both counts of the accusation (Findings 4 through 8), viewed in context, tells us that the ALJ’s assessment of the situation which confronted him was consistent with the intent of the statute prohibiting the sale or furnishing of alcohol to minors:

- 4. Both counts of the accusation were established by the evidence on the theory of furnishing to a minor. At approximately 9 o’clock in the evening of March 22, 2003, Department Investigators were at the premises to do a compliance check and observed between 7 to 10 youthful appearing young men inside the premises at the cash register.*
- 5. Investigator Duran observed a person later identified as Michael Krieger waiting at the cash register about to purchase an 18 pack of Miller beer sitting on the counter. A companion of Krieger later identified as Kevin Bush approached Krieger and handed him some cash. Both Krieger and Bush were later determined to be 21 years of age.*
- 6. Shortly thereafter but before clerk Jayawardena rang up the sale, one Jacob Huffort [sic], a minor who was subsequently determined to be 19 years of age and who was not a minor decoy, obtained 2 cans of beer from the cooler; approached the counter and placed those cans on the counter, next to Krieger’s Miller beer in full view of the clerk.*
- 7. Prior to the consummation of the sale between Krieger and clerk Jayawardena, one Scott Parisen, a minor who was subsequently determined to be 19 years of age, and who was not a minor decoy, brought to the counter additional cans of beer from the cooler for Krieger to purchase. Parisen handed Krieger a \$5.00 bill. All of this was done in full view of the clerk.*
- 8. The clerk thereafter rang up the sale for the beer Krieger, Huffort [sic] and Parisen brought to the counter. Prior to the sale the clerk had asked Krieger for and was shown his California Driver’s license, which showed him to be 21 years of age. After paying for the purchase by his credit card, Krieger then left the premises with all of the beer accompanied by other members of the group including Huffort [sic] and Parisen. The group was planning a party and the beer was purchased for the festivities.*

There is a considerable difference between the above scenario and those posited by appellant, in which children accompany their parents into a supermarket, or accompany their parents or other adults at dinner where the adults are served wine. In this case, the clerk knew, or should have known, that Krieger was buying beer not only for himself, but also as a conduit for Huffert and Parisen, who selected and/or paid for their share of the overall purchase.

The clerk is the person in control of the sale. He or she must be alert to the substance of the transaction, and cannot ignore circumstances that ought to raise questions in the mind of a reasonably prudent person. When the transaction is in the nature of a group purchase, as the one in this case appeared to be, a clerk must establish that each of those who are involved in the transaction are 21 or over. It is not enough that the person who assembles the various selections and pays for them is 21. A clerk may not close his or her eyes to the reality of what is taking place. The critical fact in this case is not the mere presence of minors, it is their participation in the transaction, all of which took place in front of the clerk.

Business and Professions Code section 23001 declares that “the subject matter of this division involves in the highest degree the economic, social, and moral well-being and safety of the state and of all its people,” and mandates that “all provisions of this division shall be liberally construed for the accomplishment of these purposes.” It would be an unduly restrictive reading of the word “furnish” to accept appellant’s contention that there was no furnishing in this case.

ORDER

The decision of the Department is affirmed.³

TED HUNT, CHAIRMAN
KAREN GETMAN, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

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

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