

1979

Celebrity Club, Inc. v. Utah Liquor Control Commission : Brief of Respondent in Answer to Petition for Rehearing

Utah Supreme Court

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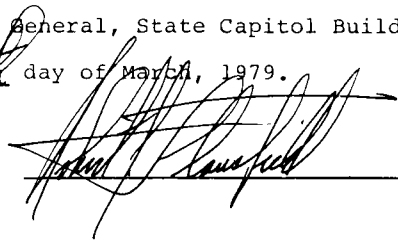
Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

CELEBRITY CLUB, INC., a Utah :
nonprofit Corporation, :
 :
Petitioner, : PETITION FOR REHEARING
 :
v. :
 :
UTAH LIQUOR CONTROL : Case No. 16083
COMMISSION, :
 :
Respondent. :

The above named Petitioner hereby petitions the Court for a rehearing of the above entitled matter. Although the Court did not render a written decision setting forth the specific basis for its denial of the petition herein, Petitioner requests a rehearing in the above entitled matter for the reasons and upon the grounds following, to wit:

Delivered a copy of the foregoing Petition for Rehear-
ing to the Utah State Attorney General, State Capitol Building,
Salt Lake City, Utah, this 20th day of March, 1979.



A handwritten signature in black ink, appearing to read "Robert J. Lawfield", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

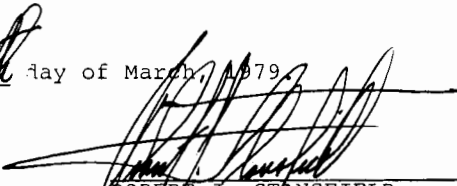
IN THE SUPREME COURT OF THE STATE OF UTAH

2. The Court erred in determining the manner in which six hundred feet (600) is to be measured.

3. The Courts did not apply the doctrine of estoppel to Respondent though all facts supporting the application of estoppel are present and estoppel is applicable to agencies of the State of Utah.

WHEREFORE, Petitioner prays that a rehearing be had in the above entitled matter; that the prior judgment of this Court be vacated and that Petitioner be granted the relief prayed in its petition.

DATED this 20th day of March, 1979



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IN THE SUPREME COURT OF THE STATE OF UTAH

CELEBRITY CLUB, INC., a Utah :
nonprofit corporation, :

Petitioner, :

-v- :

Case No. 16083

UTAH LIQUOR CONTROL COMMISSION, :

Respondent. :

RESPONDENT'S BRIEF IN ANSWER TO PETITION
FOR REHEARING

Petition for Extraordinary Relief from
Decision of Utah Liquor Control Commission

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IN THE SUPREME COURT OF THE STATE OF UTAH

CELEBRITY CLUB, INC., a Utah :
nonprofit corporation, :
 :
Petitioner, : BRIEF OF RESPONDENT
 :
-v- :
 :
UTAH LIQUOR CONTROL COMMISSION, : Case No. 16083
 :
Respondent. :

STATEMENT OF THE KIND OF CASE

The Utah Liquor Control Commission declined to establish a state store for sale of liquor in petitioner's private club. The club petitioned this Court for an extraordinary writ directing the Commission to establish the store, which petition was denied on February 28, 1979. Petitioner now seeks a rehearing, again asking this Court to order the Commission to issue a license for a state store.

RELIEF SOUGHT BY RESPONDENT

Respondent Commission requests that the Petition for Rehearing be denied.

STATEMENT OF FACTS

The petitioner, a nonprofit corporation, applied to the Utah Liquor Control Commission to establish a state store for sale of liquor in its private facility at 1037 East

3300 South, Salt Lake City, Utah. After reviewing the application and considering conflicting surveys regarding the 600 foot prohibition for a nearby private school (Salt Lake Junior Academy, 965 East 3370 South, Salt Lake City, Utah), and after holding public hearings to consider arguments for and protests against establishment of the store, the Commission denied the application on September 15, 1978.

ARGUMENT

POINT 1. THE RELIEF SOUGHT BY PETITIONER, FOR THIS COURT TO ORDER THE UTAH LIQUOR CONTROL COMMISSION TO ESTABLISH A STATE STORE, IS NOT APPROPRIATE RELIEF.

This same matter was heard by this Court on a prior occasion and Petitioner's Request for Extraordinary Relief was denied on February 28, 1979. Petitioner Celebrity Club now applies for a rehearing. Rule 76 (e)(1) of the Utah Rules of Civil Procedure clearly requires petitioner to address "the points wherein it is alleged that the appellate court has erred." Petitioner's brief fails to address those points and instead attacks the Liquor Commission's refusal to establish a state store. The petition for an extraordinary writ to order establishment of a state store was heard before. That Petition was denied, and this request for a rehearing should be denied also.

Petitioner alleges that the Liquor Commission followed the wrong survey to determine the statutory 600 foot distance.

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Petitioner overlooks that it is the Commission's legal duty to determine such matters of fact. The Commission's conclusions on factual matters, by law, are final, Section 32-1-32.6, Utah Code Annotated, and "not subject to review by this court where supported by competent evidence," The Mint v. Utah Liquor Control Commission, 586 P.2d 428 (1978).

Moreover, even if the survey showed beyond question that the petitioner was in compliance with the 600 foot rule, there still is no absolute or automatic right to a license for a state store. The law clearly authorizes the Commission in its discretion after consideration of all the factors to establish or not to establish a state store "at such places in the state as considered advisable for the sale of liquor in accordance with the provisions of this act and the regulations made thereunder," Section 32-1-36, Utah Code Annotated.

The law simply precludes a state store unless the requirements are satisfied; it does not guarantee a license once all requirements are met. It is the five-member Liquor Control Commission who finally considers and decides the number and location of state stores in light of the purpose and policy of the Liquor Control Act, Section 32-1-6(b), Utah Code Annotated.

[The] law does not require that whenever the county commission has given its approval insofar as the county is concerned, it becomes mandatory upon the Liquor Commission to grant the applica-

tion. It seems obvious that if this were the law, the Liquor Control Commission would be deprived of the authority conferred upon it by Section 32-1-6(b) to "Decide . . . the number and location of the stores and package agencies to be established in this state."

The Rogue v. The Utah Liquor Control Commission, 500 P.2d 509 (1972).

The sale of alcohol is a privilege, not a right. It is allowed, but restrained. It is permitted, but controlled. This Court has long held that a person has no right to a state store or to sell alcohol, and one is only privileged to establish a state store in a private club upon consent of the state through discretion of the Liquor Control Commission.

We do not think that under the statute the commissioners are bound to issue a license to everyone applying for it, though the application be made in conformity with the statute and the applicant found to possess all the qualifications requisite for the issuance of a license.

Smyth v. Butters, 112 P. 809 (1910).

Since the establishment of a state store is not a right but a privilege, petitioner's only course of action is to have the Commission consider his application. This was done, and the application was refused. In light of the facts before it, the Commission's action was reasonable and well within its authority. It was upheld on the prior petition to this Court and should be upheld now. For petitioner to request this Court to order the Commission to reverse itself and grant the license is not appropriate.

POINT II. ESTOPPEL IS NOT APPROPRIATE TO PREVENT THE LIQUOR CONTROL COMMISSION FROM REFUSING A STATE STORE PURSUANT TO LAW.

While estoppel may well be a valid legal theory in some areas of the law, it is not applicable to the Liquor Control Act and to the Liquor Control Commission in this particular matter. Petitioner argues that the Commission should be estopped from denying or infringing his right to have a state store. However, petitioner can obtain no right to a state store as against the Liquor Commission or the state. Even if a store had been established, the Commission could terminate the store and remove it from the premises without legal injury to the petitioner, Section 32-1-32.2 (f), Utah Code Annotated. Thus, the Commission's refusal to establish a state store in the first place could not possibly impair any right of Petitioner.

Petitioner now claims that the Supreme Court can order the Commission to issue a license for a state store because the Commission is estopped to deny the license on account of the petitioner's expenditure of money. Petitioner alleges that the Commission "made a determination that petitioner could proceed as directed by respondent," and then the Commission simply stood by and "quietly observed" as petitioner expended that money (page 13 of Petitioner's brief). To the contrary, nowhere do the factual matters even fairly

imply that the Commission issued any directive or had any responsibility to interfere with petitioner's project. He went forward with his improvement at his own risk.

Petitioner's characterization of statements of the Liquor Commission personnel as directives and determinations upon which he is entitled to rely is not accurate. The law is clear that the Commission alone, and no one else, is authorized to consider and grant or refuse licenses and approve or disapprove state stores, Section 32-1-6(d), Utah Code Annotated. Nowhere does the record show any representation that the Commission would ever do more than their legal duty, which is to "consider" the application. Petitioner's reliance on anything more than the Commission's "consideration" is simply not justified, either in fact or in law.

The record on appeal, the stipulation of facts in this case and the attached exhibits thoroughly demonstrate that matters of fact and of opinion were fully heard and considered by the Commission. Arguments were made, both to establish and not to establish the state store in question. Conflicting surveys were reviewed. The Commission is empowered to hear and make the determination of these matters, and they are entrusted to make the appropriate decision within the framework of the Liquor Control Act. When all of the facts and circumstances are considered, petitioner's allegation that the Commission acted arbitrarily and with impunity cannot be well taken.

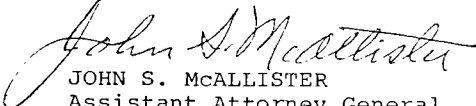
Granting or denying a state store is entirely within the discretion of the Utah Liquor Control Commission. In establishing a state store, the Commission has a duty to consider the facts and circumstances surrounding the store and determine the advisability of the store in accordance with the provisions of the statute, Section 32-1-36, Utah Code Annotated. The Commission does not have the duty to automatically grant a license. The clear directive of the statute is the protection of public health, peace and morals, "and all provisions of this act shall be liberally construed for the attainment of these purposes," Section 32-1-2, Utah Code Annotated.

CONCLUSION

The members of the Liquor Control Commission fully considered Petitioner's application. They also considered the conflicting surveys and arguments pro and con for the club to sell liquor through a state store in the club. The Commission concluded that a state store should not be established at the club. The Commission's consideration and conclusions were entirely within its authority, and the commissioners did not act arbitrarily or beyond their power. The refusal to allow a state store does not infringe on any right of the petitioner; it does not close down his club or rob him of his investment; it merely does not license the sale and use of liquor.

In view of the law and facts pertinent to this case, Petitioner's request for this Court to rehear this matter and to order the Commission to grant a license and establish a state store is not appropriate and should be dismissed.

Respectfully submitted,


JOHN S. McALLISTER
Assistant Attorney General
Attorney for Respondent

CERTIFICATE

I HEREBY CERTIFY that I mailed, postage prepaid, two (2) copies of the foregoing Respondent's Brief in Answer to Petition for Rehearing, to Robert J. Stansfield, Attorney at Law and Counsel for Petitioner, 44 Exchange Place, Salt Lake City, Utah 84111, on this 7th day of May, 1979.

