

STATE OF CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

CERTIFICATE OF DECISION

FILE: 47-518688
REG.: 12076956

It is hereby certified that the Department of Alcoholic Beverage Control, having reviewed the findings of fact, determination of issues and recommendation in the attached proposed decision submitted by an Administrative Law Judge of the Administrative Hearing Office, adopted said proposed decision as its decision in the case therein described on October 16, 2012.

THIS DECISION SHALL BECOME OPERATIVE EFFECTIVE IMMEDIATELY.

Sacramento, California

Dated: October 26, 2012



Matthew D. Botting
General Counsel

Pursuant to Government Code Section 11521(a), any party may petition for reconsideration of this decision. The Department's power to order reconsideration expires 30 days after the delivery or mailing of this decision, or on the effective date of the decision, whichever is earlier.

Any appeal of this decision must be made in accordance with Chapter 1.5, Articles 3, 4 and 5, Division 9 of the Business and Professions Code. For further information, call the Alcoholic Beverage Control Appeals Board at (916) 445-4005, or mail your written appeal to the Alcoholic Beverage Control Appeals Board, 300 Capital Mall, Suite 1245, Sacramento, CA 95814.

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

Marjorie Colwell, et al

AGAINST THE PREMISES-TO-PREMISES
TRANSFER EXPANSION OF:

Bear River Casino
dba Bear River Casino & Hotel
11-15 Bear Paws Way
Loleta, CA 95551

Under the Alcoholic Beverage Control Act

} File: 47-518688
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} Reg.: 12 076 956
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} License Type: 47
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} Word Count: 33,600
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} Reporter:
} Alison Landman
} Atkinson Baker Court Reporters
}
} **PROPOSED DECISION**

Chief Administrative Law Judge John W. Lewis, Administrative Hearing Office, Department of Alcoholic Beverage Control, heard this matter at Eureka, California, on September 5, 2012.

Dean Leuders, staff counsel, represented the Department of Alcoholic Beverage Control.

George Forman, attorney-at-law, represented applicant Bear River Casino.

Protestants Cary Brian Nash, Diane Williams, James McVicker, Kimberly Nash, Marjorie Colwell, Susan Fregeau and Terry McVicker personally appeared at the hearing. By mutual consent of all protestants present, Cary Brian Nash (Nash) was selected to represent the group. Protestant Nash was allowed to appear and participate in the hearing as a party pursuant to Government Code section 11500(b).

Oral and documentary evidence was received at the hearing and the matter was argued and submitted for decision on September 5, 2012.

ISSUES

After reviewing the letters of protest filed by each of the protestants (Exhibit 2) the Court determined that the issues to be decided are whether issuance of the applied-for license would be contrary to public welfare or morals on the basis that: (1) it would increase

incidents of driving under the influence (DUI) accidents and/or arrests; (2) cause an (unsafe) increase in traffic for nearby residents; (3) it would create or cause an increase in crime; and (4) it would interfere with the quiet enjoyment of nearby residents. Each party was given an opportunity to agree, disagree, add to, or change in any way the Court's assessment of the issues identified. No objections were registered by the Applicant, the Department, or Protestant Nash.

FINDINGS OF FACT

1. Applicant Bear River Casino currently holds a Type-47 license that covers an existing casino, restaurant and bar. This current application will expand that licensed area to include a conference room and additional restaurant and adjoining bar in the newly constructed hotel (Exhibit 3).
2. The Type-47 license first issued in 2006. There were several hundred verified protestants. On the day of the scheduled hearing the parties reached an agreement and settled the matter by adding conditions to the Petition for Conditional License. The license issued subject to those conditions.
3. In December, 2008, a citizen accusation was filed by nearby residents who were members of the Homeowners Association. (Reg 08 070 211). The main focus of that accusation was Applicant Bear River Casino's failure to comply with Condition #8 which stated "*The licensee shall modify the entrance from Singley Road to Bear River Road so that public vehicular ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley Road for emergency vehicles only.*"
4. An administrative hearing was conducted on April 29, 2009. A proposed decision was issued and adopted by the Department.
5. Applicant Bear River Casino appealed that Decision to the Alcoholic Beverage Control Appeals Board. The Appeals Board remanded the matter to Department "for such further proceedings as may be necessary and appropriate". (AB-9047)
6. The Department then issued a Decision Following Appeals Board Decision remanding the matter "for such further and additional proceedings as may be necessary and appropriate in the ALJ's sole discretion".
7. A second administrative hearing was held on May 19, 2011, in Eureka, California. A Proposed Decision After Remand was submitted and adopted by the Department. That decision, which removed Condition #8 from the Petition For Conditional License, is now final.

8. The California Highway Patrol was never contacted as part of the Department's investigation into this application.
9. The Humboldt County Sheriff's Department was never contacted as part of the Department's investigation into this application.
10. On October 15, 2011, Crystal Carpenter was involved in a single vehicle traffic accident. Her vehicle ran off the roadway at the Main Street exit of the 101 Freeway. Although Exhibit VI appears to be a report of that accident it is not complete and there appears to be page(s) missing.
11. There was testimony from employees of Bear River Casino that Crystal Carpenter was at the Casino immediately prior this accident.
12. According to the testimony of employees, an investigation was conducted by Bear River Casino. Several employees admitted being interviewed as part of that investigation. It also appears that there was video evidence of Crystal Carpenter at the Casino prior to the accident, however, it is not known who has this video at this point in time.
13. There was additional evidence presented alleging employees and / or customers of Bear River Casino left the Casino and were driving while intoxicated (Exhibit II), or causing damage to nearby residents' property by running off the road, etc. (Exhibit III). However, there is no direct evidence connecting these incidents to the Casino.
14. Several nearby residents have been the victims of residential burglaries in the past few months. The residents believe that these burglaries are being perpetrated by customers of the Casino. However, there is no evidence to substantiate that.

CONCLUSIONS OF LAW

1. Article XX, section 22 of the California Constitution delegates the exclusive power to license the sale of alcoholic beverages in this state to the Department of Alcoholic Beverage Control.
2. Business and Professions Code section 23958¹ requires that the Department conduct a thorough investigation to determine, among other things, if the applicant and the Proposed Premises qualify for a license, if the provisions of the Alcoholic Beverage Control Act have been complied with, and if there are any matters connected with the application which may affect public welfare or morals. It provides, in part, that the Department shall deny an application for a license if the applicant or the Proposed Premises do not qualify for a license under the Act.

¹ All statutory references are to the Business and Professions Code unless otherwise noted.

3. In a protest matter, the applicant bears the burden of establishing that he is entitled to a liquor license from the start of the application process until the Department makes a final determination.²
4. Section 24015(b) provides that "Any person who has filed a verified protest in a timely fashion ... may request that the department conduct a hearing on the issues raised in the protest".
5. There were a total of eleven verified protests in this matter. (Exhibit 2).
6. Section 24015 (d) provides that "If a request for a hearing is filed with the department pursuant to subdivision (b), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing".
7. Exhibit 2 contains the protests filed in this case. The four issues outlined above, and agreed to by all parties, are contained within those protest letters.
8. The Department failed to conduct a thorough investigation as required by statute. The issues raised in the protest letters were never properly addressed one way or the other. It is impossible to determine if the protest issues have any validity and what should be done with this application.
9. The department investigation relies entirely on the 2009 citizen accusation hearing and 2011 remand hearing. That case was an accusation, not a protest. The issue in those matters was whether or not the licensee violated Condition #8 on their Petition for Conditional License. Although there was some evidence and testimony regarding safety, traffic and driving under the influence, those items were offered to assist in reaching an appropriate remedy in that case.
10. The incident involving Crystal Carpenter, which was addressed in the protest letters, was never investigated by the department. Neither were other alleged incidents involving customers leaving the Casino and driving while intoxicated. The department investigator never contacted the California Highway Patrol for their input as to these incidents and any other incidents involving the traffic and safety near the casino. The Highway Patrol is the law enforcement agency responsible for dealing with traffic related issues in that area. The input by a supervisor of the Highway Patrol would carry great weight by the Court in determining how to resolve the issues raised by the protestants.
11. Although the protestants were not able to obtain the investigation conducted by the

² *Coffin v. Alcoholic Beverage Control Appeals Board*, 139 Cal. App. 4th 471, 43 Cal. Rptr. 3d 420, (2006).

Casino with regard to Crystal Carpenter, and possibly surveillance video, the department surely could have obtained it and reviewed it. Is it relevant? Absolutely. By all accounts she was consuming alcoholic beverages at the Casino just prior to leaving and becoming involved in the traffic accident.

12. The protests also address crime in the area of the Casino. There was testimony from some protestants verifying recent crime in the area near the Casino. The department never contacted the Humboldt County Sheriff's Department to determine what types of crime problems there are in the area and whether or not there is any relationship with the Casino. Since the Sheriff's Department is responsible for policing that area, their observations and opinion would certainly carry a great deal of weight.

13. Department Counsel pointed out that the department did contact law enforcement regarding this application, noting Exhibit 3, page 5, which states "Via ABC-211 on 2/1/12". However, there was no testimony or evidence presented to explain what that means, who was contacted, or what if anything was discussed.

14. The right of citizens to protest the issuance of an Alcoholic Beverage Control (ABC) license has been in place since before the inception of the department. Their protests must be investigated thoroughly by the Department. If they disagree with the department's decision regarding a specific license application then they can request a hearing.

15. In short, the protestants are entitled to their "day in court". To simply say, as was done here, that all of the issues raised by the protestants were decided previously and they have no merit, does not amount to conducting a thorough investigation. Besides, it is not accurate.

16. The law provides protestants with an opportunity to be heard regarding an application for an ABC license. It also requires the department to conduct a thorough investigation regarding that application. If the department is not going to do those things then they just might as well ignore all protests and approve every application it receives.

17. It should be noted that not only are the protestants harmed by this inadequate investigation, so is the Applicant. The Applicant does have the burden of proof in these matters. However, as pointed out by Applicant's counsel, it is difficult to "prove a negative". The Applicant does not have access to law enforcement records and reports regarding the issues raised by the protestants. In situations like this the Applicant must also rely on the department conducting the required "thorough" investigation.

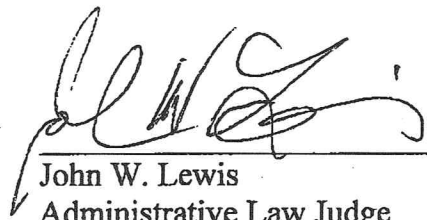
18. The Applicant is currently operating under an interim permit issued by the department in April, 2012 and reissued in August, 2012.

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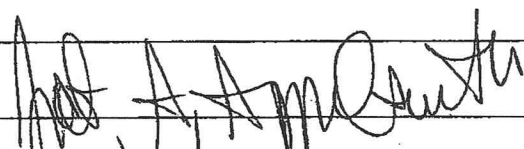
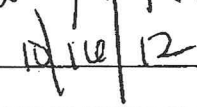
ORDER

This entire matter is remanded to the department so that a thorough investigation can be conducted regarding the issues raised in the letters of protest. Once that investigation is complete and approved, a protest hearing, if necessary, will be scheduled. It will be a hearing de novo.

Dated: September 14, 2012



John W. Lewis
Administrative Law Judge

<input checked="" type="checkbox"/> Adopt
<input type="checkbox"/> Non-Adopt: _____
By: 
Date: 

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:

MARJORIE COLWELL, et al

AGAINST THE PREMISES TO PREMISES LICENSE
TRANSFER TO:

BEAR RIVER CASINO
BEAR RIVER CASINO & HOTEL
11-15 BEAR PAWS WAY
LOLETA, CA 95551

File: 47-518688

Reg: 12076956

DECLARATION OF SERVICE
BY MAIL

ON-SALE GENERAL EATING PLACE - LICENSE

under the Alcoholic Beverage Control Act.

The undersigned declares:

I am over eighteen years of age, and not a party to the within cause; my business address is 3927 Lennane Drive, Suite 100, Sacramento, California 95834. I served by CERTIFIED mail a copy of the following document(s):

CERTIFICATE OF DECISION

on each of the following below and as listed in the attached document, by placing same in an envelope(s) addressed as follows and as listed in the attached document:

BEAR RIVER CASINO
BEAR RIVER CASINO & HOTEL
27 BEAR RIVER DR
LOLETA, CA 95551

SEE ATTACHED LIST

Dean Lueders, Staff Counsel
Headquarters, Legal - Inter Department Mail

GEORGE FORMAN
4340 REDWOOD HIGHWAY STE E352
SAN RAFAEL, CA 94903

Each said envelope was then, on October 26, 2012 sealed and deposited in the United States Mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2012 at Sacramento, California.



Declarant

EUREKA DISTRICT OFFICE (INTEROFFICE MAIL)
 DIVISION OFFICE (INTEROFFICE MAIL)

File: 47-518688

Reg: 12076956

October 26, 2012

Declaration of service for:

BEAR RIVER CASINO

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