

ORIGINAL

IN THE SUPREME COURT OF OHIO

A & Q MARKET, INC.

APPELLANT,

V

OHIO LIQUOR CONTROL COMMISSION

APPELLEE

09-2272

ON APPEAL FROM THE  
FRANKLIN COUNTY COURT  
OF APPEALS, TENTH  
APPELLATE DISTRICT

COURT OF APPEALS  
CASE NO. 09AP-283

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NOTICE OF APPEAL  
OF APPELLANT A & Q MARKET, INC.

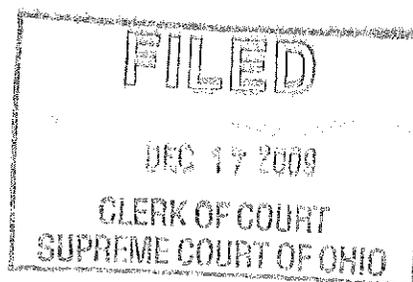
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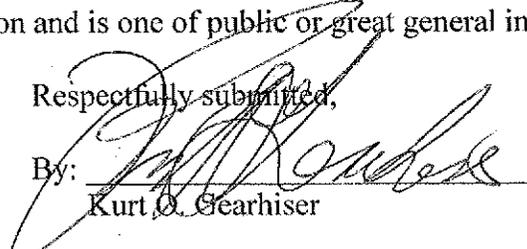


Notice of Appeal of Appellant, A & Q Market, Inc.

Appellant, A & Q Market, Inc. hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Judgment Entry of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals Case Number 09AP-283 on November 3, 2009.

This case raises a substantial constitutional question and is one of public or great general interest.

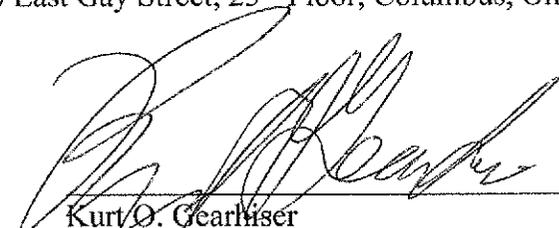
Respectfully submitted,

By:   
Kurt O. Gearhiser

COUNSEL FOR APPELLANT,  
A & Q MARKET, INC.

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellee, Scott Longo, Assistant Attorney General, 150 East Gay Street, 23<sup>rd</sup> Floor, Columbus, Ohio, 43215 on December 16<sup>th</sup>, 2009.

  
Kurt O. Gearhiser

COUNSEL FOR APPELLANT,  
A & Q MAREKT, INC.

*Kurt O. Gearhiser*

FILED  
FRANKLIN COUNTY PRO

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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CLERK OF COURTS

A & Q Market, Inc.,	:	
	:	
Appellant-Appellant,	:	
	:	No. 09AP-283
v.	:	(C.P.C. No. 08CVF10-15349)
	:	
Liquor Control Commission,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

D E C I S I O N

Rendered on November 3, 2009

*The Gearhiser Law Firm, Inc., and Kurt O. Gearhiser, for appellant.*

*Richard Cordray, Attorney General, and Scott A. Longo, for appellee.*

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, A & Q Market, Inc. ("appellant" or "the permit holder"), has appealed a judgment by the Franklin County Court of Common Pleas affirming a decision by appellee, the Ohio Liquor Control Commission ("appellee" or "the commission"), revoking appellant's liquor license. For the reasons that follow, we affirm.

{¶2} Appellant is a liquor permit holder doing business in Cincinnati, Ohio, owned by Deborah Quraga. Between October and December 2008, an investigation was conducted into the possible misuse of food stamp (EBT) cards and WIC benefit cards. As part of the investigation, confidential informants would approach appellant's employees and offer to sell EBT cards and WIC vouchers for an amount of cash less than the remaining balances. The cards would then be used and returned to the seller when the remaining balances were depleted. Deborah Quraga's husband, Adel Quraga, was the purchaser. Adel Quraga was ultimately convicted on criminal charges arising from these transactions.

{¶3} A total of five cases, numbered 1012-08, 1013-08, 1014-08, 1015-08, and 1016-08, were filed with the commission. While denying the charges, appellant stipulated to the accuracy of the investigation report in case numbers 1012-08, 1014-08, and 1015-08. In return for the stipulation, case numbers 1013-08 and 1016-08 were dismissed, as was the second of two charges in case number 1015-08. As a result of the stipulation and dismissal, the three charges before the commission were two charges of trafficking in EBT cards and one charge of illegal use of WIC benefit cards, all in violation of Ohio Adm.Code 4301:1-1-52(B)(6).

{¶4} After the hearing, the commission issued an order revoking appellant's liquor permit. Appellant appealed to the Franklin County Court of Common Pleas, which affirmed the commission's order, finding it was supported by reliable, probative, and substantial evidence, and was otherwise in accordance with law. Appellant then filed this appeal, asserting a single assignment of error:

THE ORDERS OF THE LIQUOR CONTROL COMMISSION ARE NOT IN ACCORDANCE WITH LAW BECAUSE THE LIQUOR CONTROL COMMISSION DOES NOT HAVE THE POWER TO HEAR CASES INVOLVING ILLEGAL TRANSACTIONS IN FOOD STAMP CASES OR WIC CARDS.

{¶5} Pursuant to R.C. 119.12, a court of common pleas reviewing the decision of an administrative agency may affirm the agency's order if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence, and is otherwise in accordance with law. *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826. This requires the common pleas court to engage in a two-step process. The first involves a hybrid factual/legal inquiry, in which the court defers to the agency's resolution of evidentiary conflicts and factual findings, unless the court concludes that the agency's findings are internally inconsistent, impeached by evidence in the record, rest upon improper inferences or are otherwise unsupportable. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 1993-Ohio-182. The second step requires the court of common pleas to construe and apply the law. *Id.*

{¶6} An appellate court's review of a trial court's determination regarding an administrative order is more limited, being confined to a consideration of whether the trial court abused its discretion in making that determination. *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster* (1986), 22 Ohio St.3d 191. However, the appellate court's review of issues of law is plenary. *Bartchy*, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339.

{¶7} In this case, appellant does not argue that the commission's decision is not supported by reliable, probative, and substantial evidence. Rather, appellant argues that the commission's decision is not in accordance with law. Specifically, appellant argues that the commission has no authority to enforce statutes relating to the misuse of EBT and WIC benefit cards.

{¶8} R.C. 4301.03 grants the commission authority to adopt any rules necessary to carry out Chapters 4301 and 4303 of the Revised Code. Such rules may include, "[r]ules and orders providing in detail for the conduct of any retail business authorized under permits issued pursuant to this chapter and Chapter 4303. of the Revised Code, with a view to ensuring compliance with those chapters and laws relative to them, and the maintenance of public decency, sobriety, and good order in any place licensed under the permits." R.C. 4301.03(B).

{¶9} Appellant was charged with violations of Ohio Adm.Code 4301:1-1-52(B)(6), which provides, in relevant part:

(B) Prohibited activities; no permit holder, his agent, or employee shall knowingly or willfully allow in and upon his licensed permit premises any persons to:

\* \* \*

(6) Solicit for value, or possess, buy, sell, use, alter or transfer, or allow to be solicited, possessed, bought, sold, used, altered, or transferred for value USDA food stamp coupons, Electronic Benefit Transfer (EBT) cards, WIC program benefit vouchers, or other electronically transmitted benefits, in a manner not specifically authorized by the Food Stamp Act of 1977, or the Child Nutrition Act of 1966.

{¶10} Appellant argues that nothing in R.C. Chapters 4301 or 4303 gives the commission the specific authority to regulate the sale or use of EBT and WIC benefit

cards. Appellant therefore argues that the adoption of the rule appellant was charged with violating, Ohio Adm.Code 4301:1-1-52(B)(6), was outside the scope of the commission's authority.

{¶11} A rule adopted by a state agency pursuant to statutory authority has the force and effect of law unless it is unreasonable or is in clear conflict with a statutory provision governing the same subject matter. *Ohio Council 8, American Fedn. of State, Cty. & Mun. Emps., AFL-CIO v. Cincinnati*, 69 Ohio St.3d 677, 1994-Ohio-367. Furthermore, courts should give deference to a state agency's interpretation of a statute governing its actions, as long as the interpretation is not irrational, unreasonable or inconsistent with the statutory purpose. *Morning View Care Ctr. – Fulton v. Dept. of Human Servs.*, 148 Ohio App.3d 518, 2002-Ohio-2878.

{¶12} The ultimate issue in this case is whether the commission unreasonably interpreted the statutory purpose set forth in R.C. 4301.03(B) of maintaining "public decency, sobriety, and good order" on liquor permit premises to include the prohibition contained in Ohio Adm.Code 4301:1-1-52(B)(6) on sale or transfer of EBT and WIC benefit cards in or on liquor permit premises. We cannot say the commission's interpretation that the rule regarding sale or transfer of EBT and WIC benefit cards was encompassed by its statutory authority to adopt rules to maintain public decency, sobriety, and good order on liquor permit premises was unreasonable. In fact, the rule's prohibition bears an obviously reasonable relationship to the statutory purpose, as it addresses concerns that recipients of EBT and WIC benefits might use those benefits to purchase items the benefits were not intended for, such as alcohol. As such, the commission did not exceed its statutory authority when it adopted the rule, and the

Franklin County Court of Common Pleas did not err in concluding that the commission's order was in accordance with the law.

{¶13} Therefore, appellant's assignment of error is overruled. Having overruled the assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

FRENCH, P.J., and KLATT, J., concur.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
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CLERK OF COURT

A & Q Market, Inc., :  
Appellant-Appellant, :  
v. : No. 09AP-283  
Liquor Control Commission, : (C.P.C. No. 08CVF10-15349)  
Appellee-Appellee. : (REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on November 3, 2009, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

SADLER, J., FRENCH, P.J., and KLATT, JJ.

By   
Judge Lisa L. Sadler