

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 27 1986

CLERK SUPREME COURT

LORRIS, INC.,)

Petitioner-Appellant,)

Filed August 27, 1986

vs.)

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IOWA BEER & LIQUOR CONTROL
DEPARTMENT, and CITY OF CLIVE,)

6-259
85-1717

Respondents-Appellees.)

Appeal from the Iowa District Court for Polk County (AA-738) - Glenn
E. Pille, Judge.

Respondent city filed an administrative hearing complaint with respondent
department charging that petitioner served beer to a minor in violation of Iowa
Code section 123.49(2)(h). **AFFIRMED.**

Larry Seckington and Michael J. Schroeder of Brick, Seckington, Bowers,
Swartz & Gentry, Des Moines, Iowa, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lynn M. Walding, Assistant
Attorney General, for respondent-appellee Iowa Beer & Liquor Control
Department.

Frank B. Harty of Nyemaster, Goode, McLaughlin, Emery & O'Brien, Des
Moines, Iowa, for respondent-appellee City of Clive.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

At approximately 8:00 p.m. on March 9, 1984, Ami Kathlyn Ryan, age 16, entered the petitioner tavern, Lorri's, Inc., in the company of a male police officer, age 33, and a female police officer, age 28. Deann L. Rowe, petitioner's employee, failed to ask to see Ryan's identification before taking their orders, delivering the requested alcoholic beverages, and accepting payment.

The City of Clive then filed an administrative hearing complaint with the Iowa Beer and Liquor Control Department, after the Clive police department cited Rowe for serving beer to a minor (Ryan) in violation of Iowa Code section 123.49(2)(h) (1983).

A hearing was held on July 25, 1984, before a designated hearing officer of the Iowa Beer and Liquor Control Department. The principal issue at the administrative hearing was whether Rowe knew or had reasonable cause to believe that Ryan was not of legal age. After considering extensive testimony concerning Ryan's *appearance and demeanor on March 9, 1984*, the hearing officer concluded that Rowe had reasonable cause to believe that Ryan was under the legal drinking age of 19 when she sold her the beer. Based on this conclusion, the hearing officer ordered a two-week suspension of petitioner's liquor license, pursuant to Iowa Code section 123.39(2) (1983). The hearing officer's order was subsequently twice affirmed, first on appeal to the hearing board and then on appeal to the district court.

Petitioner appeals from the district court's ruling, contending the court erred: (1) in finding the department correctly applied Iowa Code section 123.49(2)(h) to the evidence presented at the hearing before the department's hearing officer; (2) in finding substantial evidence existed in the record, when viewed as a whole, to support the license suspension; and (3) in affirming a department order which was erroneous, arbitrary, and unreasonable.

Our review is limited to the correction of errors of law. Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982). In making our determination, we apply the section 17A.19(8) standards to the agency action to determine whether our conclusions are the same as those of the district court. Brown v. Public Employment Relations Board, 345 N.W.2d 88, 93 (Iowa 1984).

I.

Petitioner initially contends that the court erred in concluding that the department had correctly applied the provisions of section 123.49(2)(h), Code of Iowa (1983). In our determination as to whether the district court, in reviewing final agency action, correctly applied the law, we give weight to the agency's construction of the statute but are not bound by this construction. Polk County v. Iowa Natural Resources Council, 377 N.W.2d 236, 239 (Iowa 1985).

Iowa Code section 123.49(2)(h) (1983) provides:

No person or club holding a liquor control license or retail beer permit under this chapter, per his agent or employees, shall do any of the following:

* * *

Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him to be under legal age, or permit any person knowing or having reasonable cause to believe him to be under legal age, to consume any alcoholic beverage or beer.

To assist us in our review we follow the rule that the polestar of all statutory construction is the true intention of the legislature. Consumer Advocate v. Iowa State Commerce Commission, 376 N.W.2d 878, 880 (Iowa 1985). We have a duty to consider the objects sought to be accomplished and to attempt reasonable construction of the provisions that will effectuate their purposes but we will avoid strained, impractical or absurd construction. Estate v. Keegan, 369 N.W.2d 447, 450 (Iowa 1985).

The language "knowing or having reasonable cause to believe" has not been interpreted by the Supreme Court since its adoption by the legislature. Petitioner contends that the prior applicable Iowa Code section 124.20(3) (1971) should inferentially control in our interpretation of the current law. The prior law provided that a person shall not "knowingly" sell liquor to a minor. It was determined that an element of the crime was the violator's knowledge that the purchaser was a minor. State v. Leichhook, 186 N.W.2d 655, 657 (Iowa 1971). Regarding this change we note the rule that amendments to statutes are to be examined with an eye toward determining legislative design which motivated the change; an amendment is assume to have sought to accomplish some purpose and not simply a meaningless exercise of legislative power. Western Outdoor Advertising Co. v. Board of Review, 364 N.W.2d 256, 258 (Iowa 1985).

Here the legislature struck "knowingly" and substituted "knowing or having reasonable cause to believe." Petitioner contends that the court was required to consider the violator's actual knowledge. We consider such interpretation flawed.

The petitioner cites as supporting its position Restatement (Second) of Torts § 11 (1965), which provides that "reasonably believes" denotes "the fact that the actor believes that a given fact or combination of facts exists, and that the circumstances which he knows, or should know, are such as to cause a reasonable man to believe." What the actor should know is what a reasonable man would have known if he were in the actor's shoes. Restatement (Second) of Torts § 11, comment a (1965). "The qualities which primarily characterize the reasonable man, to whose standard the actor is required to conform in order to be protected in his ignorance of the actual facts, are normal acuteness of perception and soundness of judgment." Id.

We reject petitioner's assertion that the court must consider the "actual knowledge" of the violator. The standard is based on the reasonable man, an objective viewpoint. The reviewing body must determine if the violators' actions were within the realm of what a reasonable man would have known. The hearing officer concluded, based on the evidence introduced at the hearing, that Deann Rowe had reasonable cause to believe Ami Ryan was under legal drinking age. The hearing officer applied the correct principle, an objective test regarding the violators' knowledge, and his decision was supported by the record. Therefore, the district court was correct in upholding the decision.

II.

Petitioner also contends that the trial court erred in finding that substantial evidence existed in the record to support the license suspension. We are able to review this contention pursuant to Iowa Code section 17A.19(8)(f) (1983). When determining whether evidence is substantial we use the following proposition:

Evidence is substantial when a reasonable mind would accept it as adequate to reach a compulsion. . . . The entire record must be considered in determining whether the challenged finding has sufficient support. Nonetheless, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Mount Pleasant v. Public Employment Relations, 343 N.W.2d 472, 476-77 (Iowa 1984); Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978).

We have carefully considered the record of the hearing officer and his order, the decision of the hearing board, and the ruling of the trial court. After thoughtful review, we find more than substantial evidence in the record to support the hearing officer's decision.

III.

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The petitioner asserts that the trial court erred in affirming a department order which was erroneous, arbitrary, and unreasonable. We have jurisdiction to address this issue pursuant to Iowa Code section 17A.19(8)(g) (1983). Petitioner has the burden to establish that the agency action was arbitrary, capricious, or unreasonable. Mathis v. State Conservation Commission, 369 N.W.2d 435, 437 (Iowa 1985). The terms are defined as:

The terms "arbitrary" and "capricious" when applied to test the propriety of agency action are practically synonymous and mean that the action complained of was without regard to established rules or standards ... or without consideration of the facts of the case. "Unreasonable" has been said to mean action in the face of evidence as to which there is no room for difference of opinion among reasonable minds.

Id (quoting Churchill Truck Lines, Inc. v. Transportation Regulation Board, 274 N.W.2d 295, 299-300 (Iowa 1979)). Under section 123.39 the commission may suspend a liquor license for up to one year for any violation of chapter 123. The purpose of chapter 123 is "for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose." Iowa Code § 123.1 (1983). There is no evidence from the record to show that the hearing officer's decision was in any way unreasonable.

Finally, we address whether respondent is entitled to costs on appeal. Pursuant to Iowa Rule of Appellant Procedure No. 28, we order petitioner to pay all costs of appeal.

AFFIRMED.