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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Dolgencorp, LLC, d/b/a Dollar General Store
#1307,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 10-ALJ-17-0902-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: Charles (Jay) Hupfer, Jr., Esquire
For the Respondent: Benjamin J. Tripp, Esquire
For the Protestants: Pro se

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. §§ 1-23-310 et seq. (2005 & Supp. 2009), S.C. Code Ann. § 1-23-600(B) (Supp. 2009), and S.C. Code Ann. § 61-2-260 (Supp. 2009). The Petitioner, Dolgencorp, LLC, d/b/a Dollar General Store #1307 (Petitioner), applied for an off-premises beer and wine permit pursuant to S.C. Code Ann. §§ 61-4-500 et seq. (2009) and § 61-6-2010 (Supp. 2009) for the location at 113 Columbia Road, Wagener, South Carolina 29164. Michael Miller and Jeff Key (Protestants) filed written protests to the Petitioner's application. Respondent South Carolina Department of Revenue (Department) denied the application pursuant to S.C. Code Ann. § 61-4-525 (2009) and § 61-6-1825 (2009) due to the receipt of the Protestants' valid public protests.

After notice to the parties and the Protestants, the Court held a hearing on this matter on February 7, 2011. Both parties and the Protestants appeared at the hearing. Evidence was introduced and testimony presented.

After carefully weighing all of the evidence, the Court finds that the Petitioner's application for this location should be granted, contingent on a condition detailed below and stipulated to by all parties in the matter.

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FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passed upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by a preponderance of the evidence.

Notice of the time, date, place, and subject matter of the hearing was given to all parties and the Protestants.

Notice of the application was lawfully posted at the location and published in a newspaper of general circulation. The Department determined that the Petitioner met all the statutory requirements for a beer and wine permit. At issue in this case is whether the proposed location is suitable for the sale of beer and wine.

Dolgencorp, LLC is the owner of the business Dollar General Store #1307. Petitioner is seeking an off-premises beer and wine permit for Dolgencorp, LLC, d/b/a Dollar General Store #1307. The proposed location is located at 113 Columbia Road, Wagener, South Carolina 29164, in the County of Aiken. The proposed location is within the municipal limits of Wagener. The location is in a residential area with schools three tenths of a mile and churches one tenth of a mile nearby. The closest residents are located behind and across Columbia and Sand Dam Roads.

Gary Sinclair is the Regional Director of Operations for Dollar General in the South Carolina, Georgia and Florida states. Based upon his testimony I find that all employees, district managers, and regional directors must attend Dollar General's extensive beer and wine sales training program. The program stresses personal criminal and civil liability for illegal alcohol sales and a no tolerance corporate policy for violations of the rules and regulations regarding sales of beer and wine. The program also discusses how to check customer identification, ID card validity, and how to handle situations if a person is not eligible to purchase beer and wine. The proposed location has regular inspections of the parking lot for litter daily by employees and periodically by management. Loitering is not allowed and is not an issue at this location. On-premises consumption of beer is not allowed on the premises; the store plans to sell warm beer in six packs, not chilled or single bottles or cans of beer.

The Protestants testified that their main concerns with the location are the school children that are walking from school and frequenting the store, the church ministry homes that are

located directly behind the store, and the potential for loitering in the wooded area at the side and rear of the location.

Petitioner offers to stipulate to the following condition upon the license to address concerns raised by the Protestants: The location will not sell chilled beer or single bottles or cans of beer until the next renewal period. The public can protest the permit renewal if they want to renew the condition. The condition will cease upon the renewal of the permit so long as no protest of the renewal is filed.

I find based on the evidence presented that the condition stipulated to by the Petitioner makes the location a suitable one for the sale of beer and wine.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law.

Jurisdiction

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to S.C. Code Ann. §§ 1-23-310 et seq. (2005 and Supp. 2009), § 1-23-600(B) (Supp. 2009), and § 61-2-260 (Supp. 2009). “[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed[.]” Palmer v. S.C. Alcoholic Beverage Control Comm’n, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984); See also Wall v. S.C. Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness’s demeanor and veracity and to evaluate the credibility of his testimony. See e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Suitability of Location

S.C. Code Ann. § 61-4-520 (2009) establishes the criteria for the issuance of a beer and wine permit. Included in the criteria is the requirement that the location be a proper and suitable

one. See §§ 61-4-520(5)-(6) (2009). A liquor license may be denied if the proposed location is not suitable. See, Schudel v S.C. Alcoholic Beverage Control Comm’n, 276 S.C. 138, 276 S.E.2d 308 (1981). Therefore, either a beer and wine permit or a liquor license may be denied if the location of the business is not a proper one.

“Proper location” is not statutorily defined, but broad discretion is vested in the trier of fact to determine the fitness or suitability of a particular location for the requested permit and license. See Fast Stops, Inc. v. Ingram, 276 S.C. 593, 281 S.E.2d 118 (1981). In determining whether a location is suitable, it is proper for this tribunal to consider any evidence that shows adverse circumstances of location. Kearney v. Allen, 287 S.C. 324, 326, 338 S.E.2d 335, 337 (1985); Palmer, 282 S.C. at 249, 317 S.E.2d at 478 (citing Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301 (1972)). Furthermore, in considering the suitability of a location, it is relevant to consider whether the testimony in opposition to the granting of a license is based on opinions, generalities and conclusions, or whether the case is supported by facts. Id. The determination of suitability of location is not necessarily solely a function of geography. Rather, it involves an infinite variety of considerations related to the nature and operation of the business and its impact on the community within which it is to be located. Kearney, 287 S.C. at 326-27, 338 S.E.2d at 337; Schudel, 276 S.C. at 138, 276 S.E.2d at 308. Further,

a liquor license or permit may be properly refused on the ground that the location of the establishment would adversely affect the public interest, that the nature of the neighborhood and of the premises is such that the establishment would be detrimental to the welfare . . . of the inhabitants, or that the manner of conducting the establishment would not be conducive to the general welfare of the community.

48 C.J.S. Intoxicating Liquors § 168 at 366 (2004).

Consideration can be given to whether the location is heavily traveled or creates a traffic danger. Id. Furthermore, a valid consideration is whether the surrounding area is substantially commercial. Id.; Byers v. S.C. Alcoholic Beverage Control Comm’n, 281 S.C. 566, 316 S.E.2d 705 (Ct. App. 1984).

After carefully weighing the evidence and applying the law as discussed above, the Court finds the location to be suitable for the sale of beer and wine with the stipulation proposed by the parties.

Notwithstanding ALC Rule 29(C) and the last paragraph of ALC Rule 29(D), any issues raised in these proceedings but not addressed in this Order will not be deemed denied. In order

to preserve any unaddressed issues for appeal, a party must file a Motion for Reconsideration pursuant to ALC Rule 29(D). See ALC Rule 29(D) (incorporating the grounds for relief set forth in Rule 59, SCRCP); Home Medical Systems, Inc. v. S.C. Dept. of Revenue, 382 S.C. 556, 677 S.E.2d 582 (2009) (finding that Rule 59(e), SCRCP motions are permitted in proceedings before the ALC).

ORDER

IT IS THEREFORE, ORDERED that the Department shall **GRANT** Petitioner's application for an off-premises beer and wine permit, for the premises located at 113 Columbia Road, Wagener, South Carolina contingent upon the following condition: The location will not sell chilled beer or single bottles or cans of beer. This condition will run for the biennial term of this license and will expire upon the 2013 license renewal unless a protest of the renewal is filed. If a valid public protest of the license renewal is filed, the Court will consider the propriety of continuing the condition or issuing a license without the condition at that time.

A violation of this condition shall be deemed a violation of the permit.

IT IS SO ORDERED.

Deborah Brooks Durden
Administrative Law Judge

February 10, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

February 10, 2011
Columbia, South Carolina

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SC ADMIN. LAW COURT