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Malfitano v. County of Storey, 133 Nev. Adv. Op. 40 (June 29, 2017)

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Malfitano v. County of Storey, 133 Nev. Adv. Op. 40 (June 29, 2017)¹

ADMINISTRATIVE AND CONSTITUTIONAL LAW:
STATUTORY VAGUENESS; DUE PROCESS; EQUAL PROTECTION

Summary

The term “satisfactory”, as used in county code providing for liquor licensing, was not unconstitutionally vague where the provision was not related to any civil or criminal penalty. Additionally, Respondents did not violate Appellant’s due process rights by denying his application for a liquor license because Appellant had no cognizable property interest in or entitlement to the license. Finally, Appellant’s equal protection rights were not violated because Respondents had a rational basis for denying Appellant’s application.

Background

Appellant Vincent Maltifano acquired two saloon casinos in Virginia City, Nevada but lacked the requisite gaming, liquor, and general business licenses to run the saloons himself. While a licensed third party ran the businesses, Maltifano applied for the three licenses. The Nevada Gaming Commission (“NGC”) was the first entity to deny Maltifano the required gaming license. The NGC denied Maltifano’s application for various reasons, including his “fail[ure] to demonstrate adequate business competence.”

Maltifano then applied to the Storey County Board of County Commissioners and Liquor Board (collectively, the “Board”) for, respectively, a general business license and liquor license. The Board initially denied his applications because duplicate applications were not permitted, and the third party running the businesses already held the relevant licenses for both saloons. At the hearing, one of the Board’s Chairpersons assured Maltifano that the applications would be approved after the duplication issue had been resolved; however, the County Manager immediately clarified that the applications would be considered, but not necessarily approved.

Maltifano resolved the issue by concluding his arrangement with the third party. He then obtained temporary licenses and re-applied to the Board for the requisite permanent licenses. However, citing Storey County Code (“SCC”) § 5.12.010(A), which requires the applicant to show “proof of financial standing to warrant an expected satisfactory and profitable business operation,” the Board denied Maltifano’s application for a liquor license a second time.

Maltifano filed a petition for a writ of mandamus, alleging that: (1) the Board acted arbitrarily and capriciously in denying his applications; (2) the Board violated his due process and equal protection rights; and (3) SCC § 5.12.010(A) was unconstitutionally vague. The district court issued an order denying the writ petition. Maltifano appealed.

¹ By Brent Resh

Discussion

A district court's decision on a petition for a writ of mandamus involving a question of law is reviewed *de novo*; however, a decision on a question that does not raise a question of law is reviewed for an abuse of discretion.² The Court considered three issues: (1) whether the term "satisfactory," as used in SCC § 5.12.010(A), was unconstitutionally vague; (2) whether Maltifano's due process rights were violated; and (3) whether Maltifano's equal protection rights were violated.

Vagueness. The Court determined that SCC § 5.12.010(A) was not unconstitutionally vague because the provision did not create any civil or criminal penalty for failure to meet the "satisfactory" standard. Rather, an application failing to meet that standard may simply be denied. Additionally, ordinances that regulate matters of "public health, safety, morals, or general welfare"³ do not need to "prescribe detailed standards."⁴ Moreover, the ordinance/code required the Board to base its decision on objective facts and criteria.

Due Process. The district court did not abuse its discretion in finding that the Board did not violate Maltifano's due process rights because Maltifano had no cognizable property interest or entitlement in the liquor license. First, the fact that Maltifano held a temporary license was not dispositive of an entitlement to the permanent license because the code expressly provided for the possibility that an application might be denied even though a temporary license had been issued.⁵ Second, the Court found that the district court did not abuse its discretion in finding that the statement by the Chairperson to Maltifano did not constitute a promise that the applications would be granted. Third, the Board's history of liberally approving similar applications was irrelevant because "a constitutional entitlement cannot be created—as if by estoppel—merely because a wholly and *expressly* discretionary state privilege has been granted generously in the past."⁶

Equal Protection. The district court did not abuse its discretion in finding that the Board did not violate Maltifano's equal protection rights because the Board had a rational basis for denying the application. The Board was aware that Maltifano had been denied a gaming license for various reasons directly related to Maltifano's financial standing under the Storey County Code.

Conclusion

The Court affirmed the district court's order denying Appellant's petition for a writ of mandamus for the reasons discussed above.

² Veil v. Bennett, 131 Nev. Adv. Op. 22, 348 P.3d 684, 686 (2015).

³ 9 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 26:85 (3d ed. rev. 2016).

⁴ Maltifano v. County of Storey, 133 Nev. Adv. Op. 40, at 7 (June 29, 2017) (citing Mills v. City of Henderson, 95 Nev. 550, 552, 598 P.2d 635, 636 (1979)).

⁵ See *id.* at 10 (citing Storey County Code § 5.12.130).

⁶ *Id.* at 11 (citing Conn. Bd. of Pardons v. Dumschat, 452 U.S. 458, 465 (1981)).