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STATE CAPITOL
PHOENIX, ARIZONA

November 16, 1972

DEPARTMENT OF LAW OPINION NO. 73-1 (R-1)

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REQUESTED BY: GEORGE GAVIN
Chairman
State Liquor Board

QUESTION: Is it consistent with the provisions of Arizona's law, creating the Department of Liquor Licenses and Control and directing the duties of both the Superintendent and the Liquor Board, for the Liquor Board to designate the Superintendent as its representative?

ANSWER: See body of opinion.

In 1967, Arizona's Legislature substantially restructured the Department of Liquor Licenses and Control (Department hereafter). Prior to the 1967 Act, the Superintendent exercised all of the functions of the Department with respect to liquor licenses; however, the 1967 Act created a Liquor Board within the Department, which resulted in a division of responsibilities and functions between the Superintendent and the Liquor Board with respect to liquor licenses.

A.R.S. § 4-112.A details the duties of the Liquor Board:

- A. The board shall:
1. Grant and deny applications in accordance with the provisions of this title.
 2. Have sole power to revoke a license.
 3. Adopt rules and regulations in order to carry out the provisions of this section.
 4. Hear appeals and hold hearings as provided in this section.

A.R.S. § 4-112.B details the duties of the Superintendent as follows:

B. Except as provided in subsection A, the superintendent shall administer the provisions of this title, including:

1. Adopting regulations:
 - (a) For carrying out the provisions of this title.
 - (b) For the proper conduct of the business to be carried on under each specific type of spirituous liquor license.
 - (c) To enable and assist state officials to collect taxes levied or imposed in connection with spirituous liquors.
2. Examine books, records, and papers of a licensee.
3. Employ necessary personnel and fix their compensation.
4. Keep an index record which shall be a public record open to public inspection and shall contain the name and address of each licensee and the name and address of any person having an interest, either legal or equitable, in such license as shown by any written document, which document shall be placed on file in the office of the board.
5. Provide the board with such supplies and personnel, including a hearing officer, as may be reasonably required by the board. (Emphasis added.)

Although the Liquor Board nowhere is directed specifically to do so, the following portions of the 1967 revision reflect that designation by the Liquor Board of a "representative" is envisioned.

A.R.S. § 4-203.D:

D. All applications for a transfer pursuant to subsection C shall be filed with and determined by the designated representative of the board. . . .

A.R.S. § 4-204.A:

A. A person acting as administrator, executor or guardian of the estate of any licensee, a person acting as receiver for any licensee, trustee of the bankrupt estate of any licensee or assignee for the benefit of creditors of a licensee, is authorized, upon receiving permission from the board or its designated representative to sell and deal in spirituous liquors. . . .

A.R.S. § 4-210.A:

A. The superintendent may suspend any license for a period not exceeding ten days. . . . The licensee may appeal such suspension to the board, and the board or its designated representative shall set such appeal for a prompt hearing. . . .

A.R.S. § 4-211:

A. Any decision of the board in any matter shall be final, unless any person aggrieved . . . appeals . . . on one or more of the following grounds. . . .

* * *

B. Such grounds shall be stated in a written notice of appeal filed with the court, with a copy thereof served on the one designated representative of the board. . . .

The scheme contemplated by the 1967 revision is a separation of quasi-judicial and executive powers between the Liquor Board on one hand and the Superintendent on the other. A.R.S. § 4-201.E provides for submission of a report by the Superintendent relating to qualifications of an applicant (executive function); A.R.S. § 4-201.E provides that the Liquor Board shall determine the qualifications of an applicant with respect to an original application (quasi-judicial function); and A.R.S. § 4-203 provides that the "designated representative of the Board" shall determine the qualifications of an applicant with respect to a transfer application (quasi-judicial function).

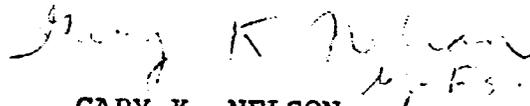
By adopting such a scheme, the Legislature has carefully and wisely avoided the inherent conflict which results when the same person occupies both the executive and quasi-judicial capacities with respect to a particular matter before an administrative agency.

Consistent with the contemplated separation of functions within the Department, it is our opinion that Arizona's Legislature intended that the position of "designated representative of the Board" be occupied by an individual acting on behalf of, and subject to the direction of, the Liquor Board.¹ A.R.S. § 4-112.B quoted hereinabove, reflects legislative expression that the Superintendent is not to perform any of the duties delegated to the Liquor Board by A.R.S. § 4-112.A.

With the possible exception of the Superintendent's A.R.S. § 4-210.A suspension power (or, in lieu thereof, his A.R.S. § 4-210.01 power to impose fines), the Superintendent's functions--as reflected throughout the provisions of law relating to the Department of Liquor Licenses and Control--relate to administrative matters and enforcement procedures. The Liquor Board's functions, on the other hand, are quasi-judicial in nature.

In our opinion, that legislative "separation of functions" should not be frustrated by delegating to the Superintendent duties which Arizona's Legislature expressly has excluded from his jurisdiction.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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1. It is interesting to note that, without commenting on the propriety of the arrangement, Arizona's Court of Appeals in Lugo v. Moore, 11 Ariz.App. 85, 462 P.2d 102 (1969), recognized the Superintendent as the designated representative of the Board.