

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

New Midwest Rentals, LLC
d/b/a Des Moines Valero #204
3733 Easton Blvd.
Des Moines, IA 50317

Petitioner,

v.

Iowa Department of Commerce,
Alcoholic Beverages Division

Respondent.

CVCV051733

**ORDER DISMISSING PETITION FOR
JUDICIAL REVIEW**

INTRODUCTION

Does Iowa Code section 123.45 prohibit “a wine manufacturer in California” from “owning an interest in Iowa stores retailing beer”? (Petitioner’s brief, p. 25). The Alcoholic Beverages Division—or “ABD”—concluded that such relationships are prohibited. Accordingly, the ABD refused to renew Petitioner’s retail beer permit.

In this judicial review action, Petitioner asks the Court to reverse the ABD’s determination. The Court concludes, however, that the ABD’s actions were consistent with the unambiguous language of section 123.45. The Court cannot conclude, therefore, that the ABD’s interpretation was “irrational, illogical, or wholly unjustifiable.” As a result, Iowa Code section 17A.19(10)(I) does not permit reversal. Instead, the ABD’s decision must be affirmed.

DISCUSSION

Background. Whatever its benefits, alcohol certainly carries risks. Our legislature addressed those risks through Iowa Code Chapter 123. See Iowa Code § 123.1.

Indeed, Chapter 123 generally bans the manufacture, possession, or sale of any “alcoholic liquor, wine, or beer” in Iowa. *Id.* § 123.2. The only exceptions are those expressly stated in Chapter 123. See *id.*; see also *id.* § 123.1.

One of those exceptions involves beer. Section 123.20 authorizes the ABD to issue, suspend or revoke beer permits “for cause under” Chapter 123. See also *id.* § 123.125.

Chapter 123 authorizes six “classes” of beer permits. *Id.* § 123.124. Each class

allows different activities. *Id.* For example, a class “A” beer permit allows the holder to manufacture and sell beer at wholesale. *Id.*

Facts at bar. This case involves a class “C” beer permit. Such permits allow their holders “*to sell beer to consumers at retail for consumption off the premises.*” *Id.* (italics added); see also *id.* § 123.132.

Petitioner operates a convenience store. In 2011, the ABD issued a class “C” beer permit to Petitioner. Later, the ABD learned that Petitioner’s owner, Mr. Forysthe, had ownership and managerial relationships with a California winery. Accordingly, in 2013, ABD declined to renew Petitioner’s beer permit. The ABD based its decision on Iowa Code section 123.45 (2013), which states in pertinent part:¹

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber, representative, broker, employee, or agent of such a person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, nor hold a retail liquor control license or retail wine or beer permit.

Petitioner pursued administrative appeals, but they were unsuccessful. On October 3, 2014, the ABD issued a final order affirming its denial of Petitioner’s renewal. The October 3, 2014 order can be found at page 405 of the certified record.

Petitioner then filed a petition for judicial review in this District Court. (Polk County case CVCV048642). On March 12, 2015, this Court entered an order (1.) reversing the ABD’s order of October 3, 2014; and (2.) remanding for interpretation of section 123.45 “in accordance with the use [of] the proper rules of statutory construction....” The March 12, 2015 order can be found at page 423 of the certified

¹. Because the denial occurred in 2013, this opinion is based upon the 2013 version of the statute.

In its remand order, the ABD discussed the impact of certain 2015 legislative amendments. In the current action, Petitioner objects strenuously to the ABD’s consideration of those amendments.

Having independently reviewed the relevant amendments, the Court concludes they were non-substantive. See 2015 Ia. Legis. Serv. Ch. 30 (H.F. 536) (WEST). Therefore, the Court believes the same result would be justified under either the pre-amendment statute or the post-amendment statute.

In any event, because this Court has based its analysis on the pre-amendment statute, arguments concerning the amendments are moot.

record.

On March 25, 2016, the ABD responded by issuing its “Final Order on Remand.” Once again, the ABD affirmed its determination that section 123.45 prohibits Petitioner from holding a retail beer permit. The March 25, 2016 order can be found at page 497 of the certified record.

On April 19, 2016, Petitioner filed another petition for judicial review. The case was argued before the undersigned on September 16, 2016. This order follows.

Standard of review. The central question is whether the Court should affirm or reverse the ABD’s repeated determination that section 123.45 prohibits renewal of Petitioner’s retail beer permit. When addressing this question, the Court must keep in mind that “the legislature clearly vested the interpretation of section 123.45 with the ABD.” *Auen v. Alcoholic Beverages Div., Iowa Dep’t of Commerce*, 679 N.W.2d 586, 590 (Iowa 2004). Therefore, pursuant to Iowa Code section 17A.19(10)(I), the ABD’s determination can be reversed only if it is based “upon an irrational, illogical, or wholly unjustifiable interpretation of” section 123.45.

Interpretation. Like all statutes, section 123.45 is a written document. Therefore, its meaning depends on its words. This is our cardinal rule of interpretation: a statute’s meaning is found in “what the legislature said.” Iowa R. App. P. 6.904(3)(m). It is not found in “what the legislature...should or might have said.” *Id.*

These principles are “so well established that authority need not be cited to support them.” *Id.* It should be noted, however, that our Supreme Court has expressly confirmed the relevance of these principles to section 123.45. In its unanimous *Auen* decision, the Court explained:

We determine legislative intent from the words chosen by the legislature, not what it should or might have said. *** Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. *** Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute. ***

Auen, 679 N.W.2d at 590 (citations omitted).

With these principles in mind, the Court turns again to the text of section 123.45. It states, in pertinent part:

A person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer, or any jobber, representative, broker, employee, or agent of such a person, shall not directly or indirectly supply, furnish, give, or pay for any furnishings, fixtures, or equipment used in the storage, handling, serving, or dispensing of alcoholic beverages, wine, beer, or food within the place of

business of a licensee or permittee authorized under this chapter to sell at retail; nor shall the person directly or indirectly extend any credit for alcoholic beverages or beer or pay for any such license or permit, nor directly or indirectly be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under this chapter to sell at retail, nor hold a retail liquor control license or retail wine or beer permit.

(underline added)

Does this statutory language prohibit Mr. Forsythe from owning and operating a retail beer permittee, such as Petitioner? The Court concludes that it does. There is no dispute that Mr Forsythe is a “person engaged in the business of manufacturing...wine.” Therefore, under the plain language of section 123.45, Mr. Forsythe cannot hold a “retail...beer permit.” Additionally, he is prohibiting from maintaining an “ownership” or “operation[al]” relationship with a “permittee authorized under [Chapter 123] to sell at retail.” Therefore, he cannot own or operate Petitioner, whose class “C” beer permit authorizes Petitioner “*to sell beer to consumers at retail* for consumption off the premises.” Iowa Code § 123.124 (italics added); see *also id.* § 123.132.

In short, the unambiguous language of Chapter 123 prohibits Mr. Forsythe’s involvement with a class “C” beer permittee such as Petitioner. The ABD was correct, therefore, in refusing to renew Petitioner’s permit.

The Court has considered various counter-arguments. For example, the Court acknowledges that the statute does not use the phrase “a person engaged in the business of manufacturing alcoholic beverages *or* a person engaged in the business of manufacturing wine *or* a person engaged in the business of manufacturing beer.” Instead, it uses the less-cumbersome phrase “[a] person engaged in the business of manufacturing...alcoholic beverages, wine, or beer.”

But the meaning is the same. For sake of comparison, consider the phrase “irrational, illogical, or wholly unjustifiable,” which appears in Iowa Code section 17A.19(10)(I). This phrase does not cause confusion or uncertainty. It clearly means “irrational” *or* “illogical” *or* “wholly unjustifiable.” *Any* of the three requires reversal. See, e.g., *Auen*, 679 N.W.2d at 592–93 (reversing because the agency’s rule was an “illogical” interpretation).

Similarly, in section 123.45, the phrase “alcoholic beverages, wine, or beer” is not ambiguous. It means “alcoholic beverages” or “wine” or “beer.” Therefore, if a person manufactures “alcoholic beverages” or “wine” or “beer,” he is subject to the statute’s prohibitions.

It might also be argued that the phrase “a retail liquor control license or retail wine or beer permit” is ambiguous. The Court disagrees. This phrase causes no uncertainty or confusion. It plainly means a “retail liquor control license,” or a “retail

wine...permit,” or a “retail...beer permit.” None of them can be held by a person involved with wine manufacturing, such as Mr. Forsythe.

Additionally, Court has also reviewed its prior order of March 12, 2015. There, the Court concluded the statute was ambiguous because different disjunctive structures were used to describe the persons regulated (manufacturers of “alcoholic beverages, beer, or wine”) and the activities prohibited (holding a “retail liquor license or retail wine or beer permit”). (CR 428). Through its present review, however, the Court has concluded there is no ambiguity. As explained, section 123.45 clearly applies to manufacturers of alcoholic beverages, manufacturers of wine, and manufacturers of beer. All three are subject to the same prohibitions. Among other things, all three are prohibited from holding a “retail liquor control license,” or holding a “retail wine...permit,” or holding a “retail...beer permit.” Therefore, the statute unambiguously prohibits a manufacturer of wine from holding a retail beer permit.

Moreover, as noted, manufacturers of wine are also prohibited from direct or indirect involvement in the operation of “permittee[s] authorized under [Chapter 123] to sell at retail.” This clearly includes Petitioner, whose “C” beer permit authorizes Petitioner “*to sell beer to consumers at retail.*” Iowa Code § 123.124 (italics added); see *also id.* § 123.132. Therefore, even if the phrase “retail liquor license or retail wine or beer permit” were deleted from the statute, the result would be the same: Wine manufacturers would still be prohibited from owning or operating a retail beer permittee such as Petitioner.

Nevertheless, Petitioner maintains *the legislative intent* behind section 123.45 was limited to prohibiting manufacturers of a particular beverage from controlling retailers of *the same* beverage. Therefore, in Petitioner’s view, the legislature’s intent is not advanced by prohibiting a wine manufacturer from owning or operating a convenience store that only sells beer. (Petitioner’s brief, p. 15 (noting Petitioner neither purchases nor sells wine)).

Because the statute is unambiguous, however, its meaning must be found solely in its text. The Court can “look no further.” *In re J.C.*, 857 N.W.2d 495, 500 (Iowa 2014).

As explained, the words of Chapter 123 unambiguously prohibit wine manufacturers from owning or operating retail beer permittees. Iowa Code § 123.45. There is no exception for beer permittees who do not also sell wine. *Id.* If the legislature had intended to create such an exception, “it would have done so by amendment.” *Auen*, 679 N.W.2d at 592.

Conclusion: The ABD's order was consistent with the plain language of Iowa Code Chapter 123. Therefore, the ABD's order was not based "upon an irrational, illogical, or wholly unjustifiable interpretation" of Chapter 123. Iowa Code § 17A.19. Accordingly, the ABD's order must be affirmed.²

ORDER

For the reasons explained, the Court hereby orders as follows:

1. The ABD's Final Order of March 25, 2016 is AFFIRMED.
2. Petitioner's application for judicial review is DISMISSED.
3. Costs are assessed against Petitioner.

². The Court has considered Petitioner's constitutional arguments. For the reasons noted in Respondent's brief, the Court declines to adopt Petitioner's arguments.



State of Iowa Courts

Case Number
CVCV051733

Case Title
NEW MIDWEST RENTALS LLC VS IA DEPT OF
COMMERCE
OTHER ORDER

Type:

So Ordered

A handwritten signature in black ink, appearing to be 'David May', written over a horizontal line.

David May, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2016-11-09 11:41:58