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IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

ASTRAL LIQUORS, INC., and  
R. J. MANDELL CORPORATION,

Petitioners,

vs.

CASE NO. 63,904

STATE, DEPARTMENT OF BUSINESS REGULATION,  
DIVISION OF ALCOHOLIC BEVERAGES AND  
TOBACCO,

Respondent.

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RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

In this brief the Petitioner, Astral Liquors, Inc., will be referred to as ASTRAL. The Petitioner, R. J. Mandell Corporation, will be referred to as MANDELL. The Respondent will be referred to as DABT.

STATEMENT OF CASE AND FACTS

This matter began by DABT filing administrative charges against ASTRAL alleging its sole stockholder and corporate officer was no longer qualified to own an alcoholic beverage license in lieu of a federal drug conviction.

Before the administrative charges were formally disposed of ASTRAL entered into a sale agreement with MANDELL for its business and its alcoholic beverage license. Upon receiving a transfer application from MANDELL, DABT denied said transfer based upon the outstanding administrative charges.

On March 4, 1982, a final administrative order by DABT revoked the beverage license of ASTRAL. Subsequently, on July 26, 1982 a final administrative order was entered denying the transfer of the license from ASTRAL to MANDELL.

As a result of the two administrative orders Petitioners appealed to the Third District Court of Appeal under a consolidation of the cases. In the consolidated appeal only the action contested was the MANDELL position regarding the denial of the transfer.

Based upon the holding of the Third District Court of Appeal the Petitioners filed their notice to invoke this Court's discretionary jurisdiction.

I. WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL FINDING A VALID DELEGATION OF AUTHORITY AFFORDS DISCRETIONARY REVIEW

Petitioners have asked this Court to invoke its discretionary jurisdiction under the provisions of Article 5, Section 3(b)(3), Fla. Const. to review the opinion of the Third District Court of Appeal in that they allege the lower tribunal ruled upon the validity of Section 561.32, Florida Statutes, declaring the Section to be a valid delegation of authority.

Respondent would argue that Petitioners have given no basis for the exercise of the discretionary jurisdiction of this Court other than the mere assertion that the District Court declared the statute in question valid.

In its opinion, the Third District Court of Appeal clearly recognized this statutory section as being within the recognized exceptions concerning the requirements that ordinarily agency discretion must be governed by legislative guidelines and standards. On a number of occasions this Court has already recognized that where the questioned statutory section concerns a specific police power a lack of specific guidelines is not detrimental to the law's constitutionality. State, Department of Citrus v. Griffin, 239 So.2d 577 (Fla. 1970); Permenter v. Younan, 159 Fla. 226, 31 So.2d 387 (Fla. 1947).

The statute below was held to be related to the police power of regulating the alcoholic beverage industry and the decision below creates no confusion in the law nor does it bring about a lack of uniformity in the application of the law.

A review of the Third District Court's original opinion also shows that this particular case may be decided upon grounds other than the questioned validity of the instant statute. The District Court held that Petitioner MANDELL failed to meet its burden of proof of persuasion and therefore failed to show entitlement to this license. Adult World, Inc. v. State, 408 So.2d 605 (Fla. 5 DCA 1981). Another ground other than the validity of the statute upon which the case may be decided is that this particular beverage license has been revoked and the same upheld on appeal.

Since the case is able to be decided upon grounds other than the statute's validity the Court should not exercise its discretionary jurisdiction as requested by Petitioners. Davis v. Department of Health and Rehabilitative Services, 390 So.2d 1194 (Fla. 1980); Peoples v. State, 287 So.2d 63 (Fla. 1973).

II. WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL IS IN CONFLICT WITH THE HOLDING OF ANOTHER DISTRICT COURT'S OPINION

Petitioners herein also seek to have the Court invoke its discretionary jurisdiction to review the decision below as provided for in Article 5, Section 3(b)(3), Fla. Const. and as grounds cite conflict between the lower tribunal's opinion and that of the First District Court of Appeal's decision in Carbo, Incorporated v. Meiklejohn, 217 So.2d 159 (Fla. 1st DCA 1968), cert den., 255 So.2d 533 (Fla. 1969).

Petitioners would urge that the requisite conflict exists between the instant case and Carbo since the statutes are similar and in Carbo the First District Court of Appeal struck down the statute before it as being unconstitutional.

A brief review of the subject statutes will show that no real conflict exists as a basis for this Court to exercise its discretionary review.

In Carbo, the statute in question dealt with the licensing of alcoholic beverage distributors and required the issuance of such license to be "in the interest of the public and the licensee concerned." In the instant matter, Section 561.32, Florida Statutes, deals with the transfer of alcoholic beverage licenses where there are administrative charges pending.



In Carbo, supra, p. 161, the First District held that since it could not find a legislative purpose making it of State concern that any one distributor made or lost money there was no way to equate economic interests of distributors with the public interest.

The essential rulings of both cases are basically the same, i.e.: Unrestricted discretion is not permitted; however, the instant holding of the Third District goes on to recognize the existence of two basic exceptions to a lack or absence of guidelines or standards to be used in exercising the discretion. These exceptions are: (1) licensing and the determination of fitness of license applicants; and (2) regulation of occupations which are engaged in by privilege rather than right and which are potentially injurious to the public welfare. Solimena v. State, Department of Business Regulation, 402 So.2d 1240 (Fla. 3rd DCA 1981).

In reviewing the holding in the instant matter with the actual rule of law in Carbo, it can be seen that the exact holdings are not in conflict. The provisions upon which the instant matter was upheld also have been addressed by the First District and this Court subsequent to Carbo, supra. In Brewer v. Insurance Commissioner and Treasurer, 392 So.2d 592 (Fla. 1st DCA 1981), the First District acknowledged the existence of such exceptions which allow discretion in areas affecting public welfare and cites this Court's opinion in State,

Department of Citrus v. Griffin, 239 So.2d 577 (Fla. 1970), as controlling. This Court also agreed upon this matter in another recent case i.e.; Coca-Cola Company v. State, Department of Citrus, 406 So.2d 1079 (Fla. 1981).

Since a review of these holding show that the exact rule enunciated by the Third District Court of Appeal has been addressed by both this Court and the First District Court of Appeal in subsequent decisions after Carbo and all are in agreement, there is no conflict for the exercise of this Court's discretionary jurisdiction. Standard Accident Insurance Co. v. Gavin, 196 So.2d 440 (Fla. 1967).

Petitioners have also argued that both the Statutes argued as the basis for the conflict are part of the Beverage Law. This argument is incorrect in that the statute held unconstitutional in Carbo, supra., is no longer a valid statute having been repealed by Laws 1972, c. 72-230, effective April 18, 1972.

CONCLUSION

Petitioners are seeking to have this case reviewed under the Court's discretionary jurisdiction based upon allegations of statutes having been declared valid and a conflict among District Court of Appeal's decisions.

The essential question on appeal can be addressed on unrelated grounds which would not require the constitutional issue to be addressed by this Court. Both this Court and the First District Court of Appeal have addressed the question of Administrative discretion subsequent to Carbo v. Meikeljohn, supra., and are in agreement; therefore, there is no conflict of decisions. On this basis the Court should not exercise its discretionary jurisdiction and the Petitioner's application should be denied.

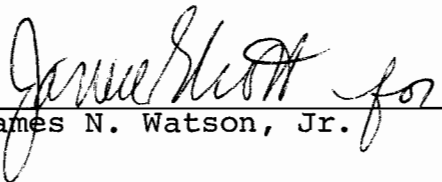
Resepctfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing  
RESPONDENT'S BRIEF ON JURISDICTION was furnished by U. S.  
Mial to Lane Abraham, Esquire, 200 S.E. First Street, #1101,  
Miami, Florida 33131, this 29th day of July, 1983.

  
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James N. Watson, Jr.