

SUPREME COURT OF NEBRASKA

Kozal v. Nebraska Liquor Control Comm.

297 Neb. 938 (2017) · No. S-17-441 · Decided September 29, 2017

SUMMARY

The Nebraska Supreme Court held that citizen objectors in a Nebraska Liquor Control Commission licensing proceeding were parties of record who had to be included in a petition for review under the Administrative Procedure Act. Because the retailers failed to include those parties, the district court lacked subject matter jurisdiction, making its order void. The Supreme Court vacated the district court’s order and dismissed the appeal without reaching the merits of the liquor-license dispute.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	September 29, 2017
DOCKET	S-17-441
DISPOSITION	vacated
PROCEDURAL POSTURE	The Nebraska Liquor Control Commission denied the appellee retailers' applications to renew their liquor licenses. The retailers petitioned for review under the Nebraska Administrative Procedure Act in the Lancaster County District Court, which vacated the Commission's order and remanded with instructions concerning automatic renewal. The Commission appealed, and citizen objectors cross-appealed.
STANDARD OF REVIEW	A jurisdictional issue that does not involve a factual dispute is a matter of law reviewed independently of the trial court.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Nebraska Liquor Control Commission v. Stuart Kozal, doing business as Jumping Eagle Inn, Arrowhead Inn, Inc., doing business as Arrowhead Inn, Clay Brehmer and Daniel Brehmer, doing business as State Line Liquor, Sanford Holdings, L.L.C., doing business as D & S Pioneer Services, Abram Neumann et al.

TOPICS

judicial review of agency action

administrative procedure act

subject matter jurisdiction

appellate jurisdiction

statutory interpretation

PRACTICE AREAS

administrative law

liquor licensing

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the citizen objectors were parties of record in the Nebraska Liquor Control Commission's liquor-license renewal proceeding.
2. Whether the retailers' failure to include the citizen objectors in the APA review proceeding deprived the Lancaster County District Court of subject matter jurisdiction.
3. Whether the Nebraska Supreme Court had jurisdiction over the appeal from the district court's order.

HOLDINGS

1. Citizen objectors who formally object to a retail liquor-license application and participate as parties in the Commission's contested proceeding are parties of record under the Nebraska Liquor Control Act and the APA.
2. The failure to make every party of record in the agency proceeding a party to the APA review proceeding is a failure to seek review in the statutory mode and manner and deprives the district court of subject matter jurisdiction.
3. Because the district court lacked subject matter jurisdiction, its order was void and the Supreme Court lacked jurisdiction to reach the merits of the appeal; the Supreme Court could nevertheless vacate the void order and dismiss the appeal.

KEY QUOTATIONS

“The failure to make a “part[y] of record” a party to the proceedings for review as required by the APA is a failure to seek review in the mode and manner provided by statute that deprives the district court of jurisdiction.” (297 Neb. at 954)

“Our decision today does not address the merits of the parties’ respective positions, but rests solely on jurisdictional grounds.” (297 Neb. at 940-941)

FACTUAL BACKGROUND

Four retailers in Whiteclay, Nebraska, held Class B liquor licenses and sought renewal. The Nebraska Liquor Control Commission required long-form renewal applications and received written objections from Sheridan County residents, triggering a contested hearing. After the Commission denied renewal, the retailers sought district court review but did not include the citizen objectors, who had participated as parties in the agency proceeding.

PROCEDURAL HISTORY

After the Commission denied the retailers' renewal applications following a contested hearing, the retailers sought APA review in district court but failed to include the citizen objectors as parties. The district court nevertheless reached the merits, vacated the Commission's order, and remanded. The Nebraska Supreme Court held that the district court never acquired subject matter jurisdiction because all parties of record were not joined, so the Supreme Court lacked jurisdiction over the appeal, vacated the district court's order, and dismissed the appeal.

DISPOSITION

vacated

CASES CITED

- deNourie & Yost Homes v. Frost, 295 Neb. 912, 893 N.W.2d 669 (2017)
- In re Interest of Luz P. et al., 295 Neb. 814, 891 N.W.2d 651 (2017)
- Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017)
- In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016)
- Conroy v. Keith Cty. Bd. of Equal., 288 Neb. 196, 846 N.W.2d 634 (2014)
- Glass v. Nebraska Dept. of Motor Vehicles, 248 Neb. 501, 536 N.W.2d 344 (1995)
- J.S. v. Grand Island Public Schools, ante p. 347, 899 N.W.2d 893 (2017)
- Nebraska Dept. of Health & Human Servs. v. Weekley, 274 Neb. 516, 741 N.W.2d 658 (2007)
- Shaffer v. Nebraska Dept. of Health & Human Servs., 289 Neb. 740, 857 N.W.2d 313 (2014)
- McDougale v. State ex rel. Bruning, 289 Neb. 19, 853 N.W.2d 159 (2014)
- Pump & Pantry, Inc. v. City of Grand Island, 233 Neb. 191, 444 N.W.2d 312 (1989)
- Grand Island Latin Club v. Nebraska Liq. Cont. Comm., 251 Neb. 61, 554 N.W.2d 778 (1996)
- Doty v. West Gate Bank, 292 Neb. 787, 874 N.W.2d 839 (2016)
- Ross v. Blake, 578 U.S. 632, 136 S. Ct. 1850, 195 L. Ed. 2d 117 (2016)
- State ex rel. Kalal v. Dane County, 271 Wis. 2d 633, 681 N.W.2d 110 (2004)
- King v. Burwell, 576 U.S. 473, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015)
- County of Webster v. Nebraska Tax Equal. & Rev. Comm., 296 Neb. 751, 896 N.W.2d 887 (2017)
- Matter of Sinclair, 870 F.2d 1340 (7th Cir. 1989)
- Doe v. McCoy, ante p. 321, 899 N.W.2d 899 (2017)
- State v. Artis, 296 Neb. 172, 893 N.W.2d 421 (2017), modified on denial of rehearing, 296 Neb. 606, 894 N.W.2d 349 (2017)
- Matter of J.M.M., 890 N.W.2d 750 (Minn. App. 2017)
- State v. Turner, 567 N.E.2d 783 (Ind. 1991)
- Jaster v. Comet II Const., Inc., 438 S.W.3d 556 (Tex. 2014)
- Schaefer v. Putnam, 841 N.W.2d 68 (Iowa 2013)

