

**PETROLEUM CLUB INN CO. V. FRANKLIN, 1963-NMSC-133, 72 N.M. 347, 383 P.2d 824 (S. Ct. 1963)**

**PETROLEUM CLUB INN CO., a corporation,  
Petitioner-Appellant,  
vs.  
George H. FRANKLIN, Individually and as Chief of Division  
of Liquor Control, Bureau of Revenue, State of New  
Mexico, Respondent-Appellee**

No. 7244

SUPREME COURT OF NEW MEXICO

1963-NMSC-133, 72 N.M. 347, 383 P.2d 824

July 15, 1963

Proceeding for prohibition to prevent chief of division of liquor control from determining whether liquor license should be revoked. The District Court, Santa Fe County, D. A. Macpherson, Jr., D.J., quashed an alternative writ, and petitioner appealed. The Supreme Court, Carmody, J., held that chief had inherent administrative power to proceed with hearing to determine whether license should be revoked because originally issued in area in which license was not authorized by statute.

**COUNSEL**

Dean S. Zinn, Santa Fe, for appellant.

Earl E. Hartley, Atty. Gen., Adolph J. Krehbiel, Joel M. Carson, II, Asst. Attys. Gen., Santa Fe, for appellee.

**JUDGES**

Carmody, Justice. Compton, C.J., Moise, J., concur.

**AUTHOR: CARMODY**

**OPINION**

{\*348} {1} Appellant was initially ordered to show cause before the chief of the division of liquor control why its liquor license should not be revoked, because it had originally been issued in an area in which, population-wise, it was not authorized under the provisions of 46-5-24, N.M.S.A.1953, 1961 Supp. Prior to the hearing, appellant sought and obtained an alternative writ of prohibition, to prohibit the chief of the division from

proceeding with the hearing. The trial court subsequently quashed the alternative writ, and this appeal followed.

{2} One of the bases upon which the trial court quashed the writ was that the chief of the division has inherent power to revoke a liquor license on the ground that the license was issued contrary to the limitations of the act above cited. Although other matters are argued, this particular ground is determinative and the case is controlled by our opinion in *Baca v. Grisolano*, 1953, 57 N.M. 176, 256 P.2d 792. There we said:

"\* \* \* The Chief of the Division of Liquor Control having power to grant liquor licenses under the provisions of the statute **has likewise inherent power to cancel and revoke any license which he finds has been, for any reason, issued without authority or issued in conflict with the statutes governing and limiting the issuance thereof** \* \* \*  
\*. The appellant, or his predecessor, not only had the right and power to revoke and cancel the license illegally issued, but it was the duty of either of them to proceed to cancel and {349} revoke it upon discovering that it had been issued without legal authority and in contradiction of the plain provisions of the statute." (Emphasis added.)

{3} See also *Board of Trustees v. State Board of Equalization*, 1934, 1 Cal.2d 784, 37 P.2d 84, 96 A.L.R. 775; and *State ex rel. First Presbyterian Church of Miami v. Fuller*, 1938, 133 Fla. 554, 182 So. 888, involving facts which are somewhat analogous.

{4} It was entirely within the administrative powers of the chief of the division (*Floek v. Bureau of Revenue*, 1940, 44 N.M. 194, 100 P.2d 225, and *Chiordi v. Jernigan*, 1942, 46 N.M. 396, 129 p. 2d 640) to proceed with the hearing, in order to determine whether the license had originally been issued without authority under the statute. *Baca v. Grisolano*, supra. The chief's determination of this question is not in excess of his jurisdiction, and prohibition does not lie. *State ex rel. Kermac Nuclear Fuels Corp. v. Larrazolo*, 1962, 70 N.M. 475, 375 P.2d 118. Appellant's remedy to appeal to the court, if the decision is adverse, is preserved.

{5} We have not overlooked *City of Socorro v. Cook*, 1918, 24 N.M. 202, 173 P. 682, relied upon by appellant, but we do not believe that it applies to the proceedings here contemplated. *Res judicata* is frequently termed applicable to administrative rulings. However, although not discussed in *Grisolano*, supra, under the authority of that case it is clear that it should not be applied in this situation. Cf. *American Trucking Associations, Inc. v. Frisco Transp. Co.*, 1958, 358 U.S. 133, 79 S. Ct. 170, 3 L. Ed. 2d 172; *Lee Hon Lung v. Dulles* (9th Cir., 1958), 261 F.2d 719; and 2 Davis, *Administrative Law Treatise*, 1809, p. 605. But see *Louis Stores, Inc. v. Department of Alcoholic Bev. Control*, 1962, 57 Cal.2d 749 22 Cal. Rptr. 14, 371 P. 2d 758.

{6} The judgment will be affirmed. It is so ordered.