

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCIS R. MITCHELL, t/a Bob's) No. 073, 2001
)
Defendant Below) Court Below: Superior Court
Appellant,) of the State of Delaware in
) and for New Castle County
v.)
) C.A. No. 00C-09-015
STATE OF DELAWARE,)
)
Plaintiff Below)
Appellee.)

Submitted: July 10, 2001
Decided: August 10, 2001

Before **HOLLAND**, **BERGER** and **STEELE**, Justices.

ORDER

This 10th day of August 2001, it appears to the Court that:

1. Appellant, Francis R. Mitchell trading as Bob's Adult Discount Books, Inc. filed an interlocutory appeal from the decision of the Superior Court reversing the ruling of the Commission in Adult Entertainment Establishments that an allege violation of 24 *Del.C.* § 1622(a) would result in assessment of a fine with no further penalty. A violation of 24 *Del.C.* § 1622(a) occurs when an establishment licensed by the Commission fails to report a change in status of employed personnel.

2. The State appealed a September 20, 2000 finding by the Commission that it did have specific authority to impose a fine as a civil penalty to the Superior

Court. The Superior Court reversed the Commission ruling that the Commission may impose the penalty of a fine under 24 *Del.C.* § 1618(c) only pursuant to regulations enacted under the authority of that statute and that as of September 20, 2000, the Commission had not promulgated any such regulations. The Superior Court remanded the case to the Commission for further hearing and certified an interlocutory appeal to this Court.

3. We reverse the Superior Court because we conclude that:

(a) A fair reading of 24 *Del.C.* § 1622, read in conjunction with 24 *Del.C.* § 1618(c) expresses a legislative policy to expand the supervisory or regulatory powers of the Commission rather than to restrict them. The legislature's delegation of rule making power to the Commission would facilitate the administration of the objectives of the statutory scheme;

(b) The record reflects a clear acquiescence by the State to the Commission's imposition of a civil penalty and an abandonment of the position that the Commission is authorized solely to impose the penalty of revocation of a validly issued license upon a finding that a licensee has violated 24 *Del.C.* § 1622(a); and,

(c) Upon remand, the issue of the lack of regulatory authority was mooted when the Commission published regulations on March 1, 2001, effective

March 11, 2001 which would authorize imposition upon remand of the very penalty to which the State both acquiesced and now about which it complains.

4. We further conclude that to continue to entertain this appeal after: (a) recognizing the legislature's intent to grant the Commission the power to impose the penalty that it in fact imposed; and, (b) noting the State's earlier acquiescence in the imposition of the civil penalty of a fine; and, (c) confirming that regulations are now in place which would authorize the imposition of the civil penalty of a fine upon remand, would not be in the interest of justice.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is REVERSED and REMANDED for action consistent with this Order.

BY THE COURT:

/s/ Myron T. Steele
Justice