

No. 82-477

IN THE SUPREME COURT OF THE STATE OF MONTANA

1983

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JOHN CURRIE COLVIN, d/b/a VINO'S,

Petitioner and Appellant,

vs.

DEPARTMENT OF REVENUE, STATE OF  
MONTANA, LIQUOR DIVISION,

Respondent and Respondent.

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Appeal from: District Court of the Sixteenth Judicial District,  
In and for the County of Custer  
Honorable A. B. Martin, Judge presiding.

Counsel of Record:

For Appellant:

Terry J. Hanson, Miles City, Montana

For Respondent:

Michael G. Garrity, Helena, Montana

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Submitted on briefs: February 3, 1983

Decided: April 7, 1983

Filed: APR 7 - 1983

*Ethel M. Harrison*

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Clerk

Mr. Justice Daniel J. Shea delivered the Opinion of the Court.

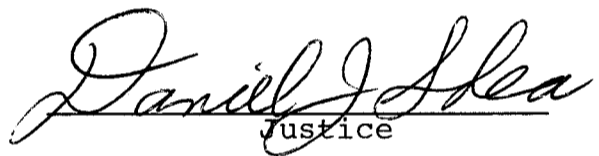
Petitioner, John Currie Colvin, appeals an order of the Custer County District Court which upheld a decision of the State Tax Appeal Board denying his application for a beer license in Miles City. Beer licenses in Montana cities are issued on a quota basis specified in section 16-4-105, MCA. Miles City then had eight beer licenses, and it had a population according to the census of 9,602 people. Under the statute, section 16-4-105<sup>(1)</sup>(a)(iii), a city must reach a population of 10,000 before a ninth beer license can issue. Colvin was, therefore, properly denied his application for a beer license. We affirm.

About one year ago, petitioner applied to the Liquor Division of the Department of Revenue for a beer license. The application was denied because the quota for beer licenses in Miles City had been filled. The State Tax Appeal Board affirmed this decision, an appeal to the District Court resulted in another affirmance, and the appeal here results in the final affirmance.

Colvin makes several arguments concerning section 16-4-105, but each argument rests on an erroneous assumption that the statute is not clear on its face. Subsection (a)(ii), clearly provides that a city of 2,000 people is entitled to four retail beer licenses. Further, subsection (a)(iii) provides that two more licenses can issue if the city population has reached 4,000. This same subsection also provides that one license can issue for each 2,000 population beyond the 4,000.

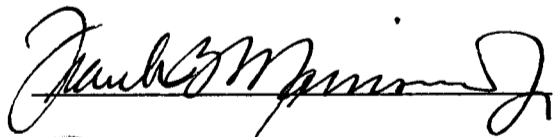
Based on this statute, when the population reached 2,000, Miles City was entitled to four licenses; when the population reached 4,000, Miles City was entitled to six licenses; when the population of Miles City reached 6,000, Miles City was entitled to seven licenses; when the population reached 8,000, Miles City was entitled to eight licenses; and finally, when the population of Miles City reaches 10,000, Miles City is entitled to nine beer licenses. At the time petitioner had applied for the beer license, the population, according to a stipulation based on the census figures, was 9,602. Petitioner, therefore, was not entitled to a beer license, for the ninth license could not issue until the population had reached 10,000.

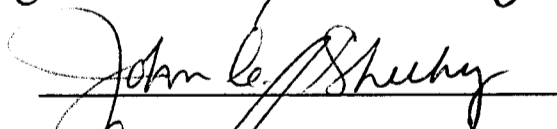
The decision of the District Court is affirmed.

  
Justice

We Concur:

  
Chief Justice





  
Justices