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Liquor Licensing—Supreme Court Reversal of a Municipality's Denial of a License—Wajda v. City of Minneapolis, ____ Minn. ____, 246 N.W.2d 455 (1976)

juvenile court either granting or denying motions for reference."[67] The opinion of the supreme court and the special concurring opinion of Justice MacLaughlin[68] discuss this problem and correctly urge the Minnesota Legislature to consider seriously the problem of the lack of separate facilities for hardcore juvenile offenders.

In conclusion, the Minnesota Supreme Court in *I.Q.S.* held that the denial of a reference motion is appealable by the state, the Minnesota reference statute and procedure are constitutional, and findings-of-fact will be required of Minnesota juvenile courts in the future to facilitate judicial review. While the Minnesota reference statute is constitutional, the Minnesota Legislature should add specific criteria to be considered by juvenile courts when applying the two standards set out in the reference statute. Additional criteria would supplement the findings-of-fact requirements of *I.Q.S.* and could be designed to help eliminate unnecessary judicial discretion, while leaving sufficient discretion to allow the juvenile courts to function in their *parens patriae* role. In addition, the legislature should consider the need for a separate secure facility for hardcore juvenile offenders.

Liquor Licensing—SUPREME COURT REVERSAL OF A MUNICIPALITY'S DENIAL OF A LICENSE—*Wajda v. City of Minneapolis*, ___ Minn. ___, 246 N.W.2d 455 (1976).

In *Wajda v. City of Minneapolis*,[1] the Minnesota Supreme Court made an unprecedented decision to reverse a municipality's denial of a liquor license. The appellant had operated or leased a 3.2 beer tavern from 1954 until 1970 without violations of the law or neighborhood problems. Subsequently, the appellant leased the premises, first to her son and later to an unrelated tenant. Each of these tenants obtained a license to operate the tavern, as required by city ordinance.[2] During

67. ___ Minn. at ___, 244 N.W.2d at 39.

68. Justice MacLaughlin, concurring specially in *I.Q.S.*, elaborated on the difficult questions of fact and policy involved in providing a separate facility for hardcore juvenile offenders. On one side is the belief that some hardcore juvenile offenders can be rehabilitated, consistent with the purposes and directions of the Juvenile Court Act, if a separate facility is provided. Such a facility would avoid placing juveniles in an adult detention facility which, it is generally agreed, decreases the chance of rehabilitation. On the other side is the Department of Corrections' conclusion that it is not feasible to develop a separate secure facility for hardcore juvenile offenders. *See id.* at ___, 244 N.W.2d at 41-43. *See generally* Boxmeyer, *supra* note 6.

1. ___ Minn. ___, 246 N.W.2d 455 (1976).

2. MINNEAPOLIS, MINN., CODE OF ORDINANCES § 366.10 (1976) requires that every seller of beer be licensed. A license may be transferred, but the application procedures for transfers, renewals, and new licenses are essentially the same. *See id.* § 366.110. Applications are investigated by the police license inspector. *See id.* § 366.150. Hearings on applications are then held by a committee of the city council. *See id.* §§ 366.180, .200.

these tenancies, numerous violations occurred. In 1974, after the city threatened the unrelated tenant with revocation of his license, he closed the bar. Shortly thereafter, the appellant applied for a license, a hearing was held, and the application was denied.

The city stated two grounds for its denial of the application: the misconduct of the former tenant-licensees and the unsuitable location of the tavern.[3] On appeal, the district court upheld the denial. The Minnesota Supreme Court addressed the issues of whether the city had acted arbitrarily and capriciously in denying the application on each of the two stated grounds. The court held that the denial was arbitrary and capricious[4] and directed the district court to order the city council to issue the license.[5] Three justices dissented.[6]

In resolving the issues, the court relied on well-settled principles governing its review of discretionary administrative decisions. Under these principles, the police power of a municipality includes the discretion to make reasonable regulations about the conduct of both intoxicating and nonintoxicating liquor businesses.[7] The test of a discretionary action is reasonableness.[8] There must be a rational relationship between the purpose of the discretionary action and the facts. The role of the reviewing court is limited to determining whether the action was arbitrary and capricious.[9]

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3. *See* ___ Minn. at ___, 246 N.W.2d at 457.

4. *See id.*

5. *See id.* at ___, 246 N.W.2d at 459.

6. *See id.* at ___, 246 N.W.2d at 459-61. Justice Otis wrote a dissenting opinion in which Justice Peterson joined and Justice MacLaughlin concurred. For a discussion of their dissent, see notes 21-25, 29 *infra* and accompanying text.

7. *See, e.g.*, State v. Kuss, 250 Minn. 236, 240-41, 84 N.W.2d 290, 293 (1957) (nonintoxicating liquors subject to the same police power as intoxicating liquors; regulation that nonintoxicating liquors cannot be given away free at a business establishment is within the police power); Cleveland v. County of Rice, 238 Minn. 180, 184, 56 N.W.2d 641, 644 (1952) (control of nonintoxicating liquors is subject to the same considerations as intoxicating liquors in the exercise of the police power to protect the public health, safety, and welfare; county can require early closing of taverns in rural areas). *See also* MINN. STAT. § 340.02 (1976) (regulating nonintoxicating liquor licenses); *id.* § 340.11, *as amended by* Act of Mar. 28, 1978, ch. 607, § 1, Minn. Sess. Law Serv. 343 (West) (regulation of intoxicating liquor licenses); MINNEAPOLIS, MINN., CODE OF ORDINANCES § 366 (1976) (regulating beer licenses).

8. The test of reasonableness was articulated in State v. Vandersluis, 42 Minn. 129, 131, 43 N.W. 789, 789 (1889):

> By the term "reasonable" we do not mean expedient, nor do we mean that the conditions must be such as the court would impose . . . . They are to be deemed reasonable where, although perhaps not the wisest and best that might be adopted, they are fit and appropriate to the end in view, to wit, the protection of the public, and are manifestly adopted in good faith for that purpose.

9. *E.g.*, Sabes v. City of Minneapolis, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963); George Benz Sons v. Ericson, 227 Minn. 1, 11, 34 N.W.2d 725, 730 (1948); *see In re* Wilson, 32 Minn. 145, 148, 19 N.W. 723, 725 (1889) (in reviewing discretionary action, "courts will not look closely into mere matters of judgment, and set up their own judgment against

In support of its denial of the license on the basis of the misconduct of the former licensees, the city council had presented arguments going to both the actual and the imputed unfitness of the appellant. Ordinarily, it is a permissible exercise of a city council's discretion to judge the character of an applicant to determine actual fitness.[10] The standard requirement is that the applicant be of good moral character.[11] The inquiry focuses on criminal behavior or previous improper conduct in operating a business.[12] The city council did not dispute the appellant's good moral character and record as a former licensee. Rather, it maintained that the appellant's age and sex made her incapable of being "strong" enough to manage the tavern, which had become disreputable.[13] The appellant's admission that her sons would probably help her run the tavern was a significant factor in the council's finding of actual unfitness.[14]

The Minnesota Supreme Court rejected the notion that the appellant's age and sex made her "presumptively incapable" of running the tavern lawfully, especially in light of her past performance. The court concluded that the city council's claim of the appellant's actual unfitness was speculative and therefore arbitrary and capricious.[15] The court emphasized that the council, rather than prejudging the appellant's

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that of municipal authorities, when there is a reasonable ground for a difference of opinion").

10. *See, e.g.,* State *ex rel.* Miller v. Reiter, 140 Minn. 491, 493, 168 N.W. 714, 715 (1918); State v. Scatena, 84 Minn. 281, 285, 87 N.W. 764, 765 (1901); State *ex rel.* Martin v. Barrett, 248 Wis. 621, 627, 22 N.W.2d 663, 666 (1946).

11. *See, e.g.,* IOWA CODE ANN. § 124.6 (West 1949) (licenses may be issued only to applicants "of good moral character"); MINN. STAT. § 340.02(8) (1976) (same).

12. *See* Lehan v. Greigg, 257 Iowa 823, 827-28, 135 N.W.2d 80, 83 (1965) (city council could not have found good moral character where applicant had been convicted of misdemeanors and statute specifically excluded from "person of good moral character" someone who had been convicted of indictable misdemeanor); Madsen v. Town of Oakland, 219 Iowa 216, 221, 257 N.W. 549, 551 (1934) (applicant's "habits and customs as to the observance or violation of the law" relate to question of good moral character); C & L Co. v. Nebraska Liquor Control Comm'n, 190 Neb. 91, 92-94, 206 N.W.2d 49, 50-51 (1973) (applicant's previous unlawful bookkeeping practises evinced lack of good moral character sufficient to justify denial of liquor license).

13. *See* ___ Minn. at ___, 246 N.W.2d at 458.

14. *See* Respondents' Brief at 11. In refusing to allow the relationship of mother and sons to be considered by the council in finding unfitness, the court seems to depart from cases in other jurisdictions that allow an applicant's relationship to former licensee-violators to be grounds for denial of the license. *See* Wilks v. Liquor Control Comm'n, 122 Conn. 443, 446, 190 A. 262, 263 (1937) (denial based on applicant's imputed unfitness; applicant's husband was a former licensee-violator); Mississippi State Tax Comm'n v. Moore, 209 So. 2d 832, 836 (Miss. 1968) (denial based on applicant's not being the true owner of the premises; applicant acted as the agent of her father, a former licensee-violator); McCanless v. State *ex rel.* Hamm, 181 Tenn. 308, 313-14, 181 S.W.2d 154, 156 (1944) (denial based on belief that applicant's brother-in-law, a former licensee-violator, would help run the business).

15. *See* ___ Minn. at ___, 246 N.W.2d at 458.

ability, could later revoke the license if actual unfitness were manifested.[16]

The council also argued that unfitness could be imputed to the appellant. The council relied on three factors to impute unfitness: the appellant's relationship as landlady to the former licensees, her ability to control the licensees' conduct, and her knowledge of the licensees' violations.[17]

The supreme court rejected these three factors as well. First, making the appellant responsible for her tenants' misconduct because of her status as landlady is an impermissible extension of the common law, the court stated.[18] Second, a municipality may not attempt to delegate its power to enforce a liquor ordinance by requiring a landlady to supervise her tenants.[19] Finally, it was "patently contrary to the evidence" to draw an inference that the appellant had knowledge of her tenants' misconduct.[20]

The dissenting justices, on the other hand, thought that the council had made reasonable inferences in deciding that the appellant was unfit. The inference that the appellant knew of her tenants' misconduct was supported by evidence that neighbors had signed a petition to the city complaining about the tavern's operation and testimony that the appellant was present when the city complained to one of the tenant-licensees and threatened to close the tavern.[21] The dissent also found that state policy permits the imposition of penalties on a lessor for the misconduct of tenant-licensees.[22] Because of this policy and because the appellant could have cancelled her tenants' leases when they used the property unlawfully, the dissent thought it was not an impermissible delegation of responsibility for the city to require the appellant to control her tenants' conduct.[23] Finally, the inference of actual unfitness of the appellant was supported by the appellant's admission that her sons might help her run the tavern and by the fact that she was a fifty-eight year-old widow.[24] The conclusion of the dissenting justices was that the court was substituting its findings for the council's.[25]

16. *See id.*

17. *See id.*

18. *See id.* In effect, the council was attempting to make the appellant vicariously liable for the illegal acts of her tenants. *See id.* Ordinarily, the imposition of such liability requires a tort situation and a master-servant relationship between the parties. *See, e.g.*, W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 69, at 458 (4th ed. 1971). Neither of these requirements obtained in *Wajda*.

19. *See* ___ Minn. at ___, 246 N.W.2d at 458.

20. *Id.*

21. *See id.* at ___, 246 N.W.2d at 460 (Otis, J., dissenting).

22. *See id.* at ___, 246 N.W.2d at 460-61. MINN. STAT. § 340.19(2) (1976) limits further licensing of an owner's premises if the owner's tenant-licensee has violated the statute governing intoxicating liquors.

23. *See* ___ Minn. at ___, 246 N.W.2d at 460-61.

24. *See id.* at ___, 246 N.W.2d at 461.

25. *See id.* at ___, 246 N.W.2d at 460.

The dissenting justices also disagreed with the court's disposition of the second issue—whether the council had acted arbitrarily and capriciously in denying the license on the grounds of the tavern's unsuitable location. A city council, in exercising its discretion, may use the nature of the building, its location, and its relationship to other buildings as factors in determining suitability.[26] In rejecting the council's claim of unsuitability, the majority relied on the fact that the tavern had been granted a nonconforming use permit when the property had been rezoned from commercial to residential.[27] The existence of the permit, coupled with the lack of evidence of the premises' inherent unsuitability, led the court to conclude that the council acted arbitrarily in using the premises' unsuitability as a reason for the denial.[28] The dissenting justices thought that the majority had no basis for holding the council's findings arbitrary and capricious in view of the numerous ordinance violations and neighborhood complaints.[29]

The court's position on these issues raises two significant questions. First, to what extent is the court narrowing a city council's discretion to judge fitness of an applicant and unsuitability of premises? Second, what prompted the court to deviate from its practise of giving wide berth to discretionary administrative decisions?

It seems possible that the court was attempting to confine the city council's discretion in deciding the fitness of an applicant to written objective criteria, compliance with which would make the grant of an application virtually automatic. Similarly, discretion in deciding suitability of the premises could be confined to some objective criteria such as inadequacy of the building.

However, the court was careful to restrict its decision to the *Wajda* facts and to recognize its own narrow scope of review. Furthermore, a post-*Wajda* decision makes it clear that the court views the existing ordinance standards as minimum requirements only.[30] Thus the council may exercise discretion and deny a license even after an applicant has met these minimums.[31]

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26. *See* Polman v. City of Royalton, ___ Minn. ___, 249 N.W.2d 466 (1977) (permit denied because tavern located in area which already had many liquor businesses); State v. Scatena, 84 Minn. 281, 285, 87 N.W. 764, 765 (1901) (to control liquor businesses, a municipality may regulate "with regard to the character of the people permitted to engage in it, the character of buildings . . . and the location with reference to other lines of business, all with the purpose of restraining any unwholesome influences likely to flow therefrom"); State *ex rel.* Higgins v. City of Racine, 220 Wis. 107, 110, 264 N.W. 490, 492 (1936) (establishing good moral character does not prevent denial if the proposed location is not a proper place because of the surroundings).

27. *See* ___ Minn. at ___, 246 N.W.2d at 459.

28. *See id.*

29. *See id.* at ___, 246 N.W.2d at 461.

30. *See* Country Liquors, Inc. v. City Council of Minneapolis, ___ Minn. ___, ___, 264 N.W.2d 821, 824 (1978) (en banc).

31. *See id.*

The answer to the first question, therefore, seems to be that the court is not narrowing the council's discretion. Rather, the court decided that in this particular case the city council was making an impermissible use of otherwise permissible criteria. The court is requiring that the unfitness considered by the council be that of the applicant, not that of the applicant's relatives or tenants;[32] and the unsuitability be that of the location itself, not that resulting from past misconduct of others.[33]

The more significant question is what prompted the court to depart from its traditional deference to discretionary action involving liquor licenses. Differing explanations of the court's disposition of the case are possible. The first is that the court decided on the facts that the council abused its discretion in denying the license: under its standards of unfitness, the council had to conclude that the facts supported granting the license.

Because the dissent disagreed about whether the standards were in fact misapplied, however, this explanation exposes the court to the criticism of having substituted its own judgment for that of the city council. If the court did substitute its own judgment, the decision undermines the city council's standards without providing discernible guidelines. The council would then be put in the uneasy position of not knowing what standards and what applications of them would pass muster.

A second explanation is that the court found in the *Wajda* facts a vehicle for expressing judicial disapproval of a political situation that had developed around liquor licensing in the City of Minneapolis. For some time prior to *Wajda,* the possibility of licensing misconduct by city council members had become prominent news.[34] This news may have prompted the court to find the occasion for reminding the city council that the power to make discretionary decisions is not absolute. The *Wajda* facts, being very close, supplied the occasion.

A third explanation places the decision within the apparent trend to give greater procedural protection to persons whose interests are con-

32. *See* notes 17-20 *supra* and accompanying text.

33. *See* notes 26-28 *supra* and accompanying text.

34. *See, e.g.,* Marx, *Wolinski's Name Recurs in Tavern Deals,* Minneapolis Star, Apr. 6, 1976, § A, at 1, col. 2 (police and aldermen failed to challenge license application of alderman's 19-year-old daughter, as secretary of corporation, despite earlier concern by police when she had applied for the license as an individual); Rigert, Coleman & Sullwold, *Liquor Licensing Reform Long Ignored,* Minneapolis Tribune, Apr. 16, 1976, § A, at 1, col. 3 ("Under the present law and the system, campaign contributions from liquor are closely related to decisions on licenses, police investigations of license applicants are not always adequate, and questionable city council decisions are sometimes made on the licenses."); Rigert, Coleman & Sullwold, *Politics and Liquor: Is It a Healthy Mix?,* Minneapolis Tribune, Apr. 15, 1976, § A, at 1, col. 1 ("Many applicants for liquor licenses suspect that political considerations—at the police level and on the city council—played the key part in action taken on their applications."); *Jury Likely to Start Probe of Liquor Licensing in June,* Minneapolis Star, May 26, 1976, § A, at 1, col. 4 (special grand jury called to "investigate alleged irregularities in the Minneapolis retail liquor industry and possible political corruption in the issuance and transfer of liquor licenses").

trolled by administrative decisions. Evidence of such a trend can be seen in recent United States Supreme Court decisions which have, in effect, eliminated the distinction between rights and privileges,[35] thus removing one of the chief obstacles to due process claims.[36] Lower court decisions in the wake of those cases tailor due process requirements to the interest at stake, rather than preserving the right-privilege distinction.[37] Likewise, legislative enactments and regulations afford procedural protections to persons whose interests are significantly affected.[38] The Minneapolis city ordinances providing hearings on license applications are an example of this.[39] Regardless of whether the procedural requirements originate in the due process clause, case law, or statute, they force administrative bodies to give reasons for the action taken. When reasons

35. *See, e.g.*, Board of Regents of State Colleges v. Roth, 408 U.S. 564, 571 (1972) ("[T]he Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights."); Morrissey v. Brewer, 408 U.S. 471, 481 (1972) (right of parolee to a prerevocation hearing); Bell v. Burson, 402 U.S. 535, 539 (1971) (hearing prior to suspension of driver's license); Goldberg v. Kelly, 397 U.S. 254, 262 (1970) (pretermination hearing for recipient of public assistance benefits).

36. The due process clause could be invoked only to protect rights, not privileges. In many cases, the court's characterization of the subject matter as a privilege meant that due process claims were precluded. *See, e.g.*, United States *ex rel.* Knauff v. Shaughnessey, 338 U.S. 537, 542 (1950) ("Admission of aliens to the United States is a privilege."); Berman v. United States, 302 U.S. 211, 213 (1937) (no right to probation); Lynch v. United States, 292 U.S. 571, 580-81 (1934) (consent of United States to be sued is a privilege); Packard v. Banton, 264 U.S. 140, 145 (1924) (business of carrying passengers on city streets is a privilege); McAuliffe v. City of New Bedford, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892) ("The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."); Anderson v. City of St. Paul, 226 Minn. 186, 190, 32 N.W.2d 538, 541 (1948) (liquor license is a privilege).

37. *See, e.g.*, Mazaleski v. Treusdell, 562 F.2d 701, 719-22 (D.C. Cir. 1977) (Public Health Service regulations constitutionally deficient for failing to provide a trial-type hearing for "at-will" employee dismissed for cause); Cross v. United States, 512 F.2d 1212, 1217-18 (4th Cir. 1975) (retail grocer entitled to de novo review of administrative action that penalized his violations of federal food stamp regulations); Biagiarelli v. Sielaff, 483 F.2d 508, 512 (3d Cir. 1973) (prisoner threatened with solitary confinement entitled to notice and hearing, but not to statement of evidentiary basis for proposed action); Van Blaricom v. Forscht, 473 F.2d 1323, 1328-29 (5th Cir. 1973) (parolee entitled to prerevocation hearing, confrontation of adverse witnesses, and a written statement of the evidence relied on and the reasons for revocation), *cert. denied*, 423 U.S. 915 (1975); Caulder v. Durham Housing Auth., 433 F.2d 998, 1003-04 (4th Cir. 1970) (tenant of subsidized low-rent housing entitled to preeviction notice detailing reasons for proposed eviction, opportunity to cross-examine adverse witnesses, representation by counsel, and a decision based on evidence adduced at hearing by impartial hearing officer), *cert. denied*, 401 U.S. 1003 (1971).

38. *See, e.g.*, IOWA CODE ANN. §§ 79.14-.18 (West Cum. Supp. 1977) (boards of education must establish evaluation criteria for teachers and provide notice, hearing, and appeal procedures to terminate teachers' employment); MINN. STAT. § 15.0418 (1976) (all parties have right to notice and hearing in a contested case); 45 C.F.R. § 205.10 (1977) (state plans for public welfare assistance must include notice and hearing provisions).

39. *See* MINNEAPOLIS, MINN., CODE OF ORDINANCES §§ 366.180, .200 (1976).

must be articulated, it follows that administrative bodies develop standards or guidelines, and this, in turn, insures that administrative action is applied fairly and evenly.[40] Clearly, this goes beyond mere procedure and affects the action substantively.

A broad perspective on *Wajda* places it within this trend. By providing a hearing, the city council invokes the standards of fairness that procedural safeguards imply.[41] The court's reversal of the council's decision, which was made after a full hearing, indicates the court's concern with standards rather than facts. *Wajda* requires articulated and reasonable standards susceptible of uniform application. Thus, the court has reaffirmed the principles of fairness and reasonableness underlying the recent trend of affording procedural safeguards in administrative actions. Viewed in this light, *Wajda* is less subject to the dissent's criticism that the court substituted its own judgment and is more consistent with the majority's express position that it was making a cautious exercise of its own power.

The impact of *Wajda* as precedent is uncertain. The unique facts of *Wajda* would allow the court to distinguish it in future cases or to invoke it whenever the court felt that a city council needed a reminder of the scope of its power. However, such a negative application seems certainly not to have been intended by the court. When viewed in the larger perspective of procedural considerations, the positive application of *Wajda* becomes clearer. The court has reaffirmed a standard that has always been the law: fairness. The court does not require a city council to develop standards that would automatically entitle a person to a license. But it does require that each applicant be subject to the same articulated criteria as every other applicant. In sum, the court's reversal of the council's decision may be unprecedented, but it is not an aberration. The *Wajda* decision is basic assurance that the standard of fairness that confines the exercise of discretionary action will not be ignored.

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40. Justice Douglas noted this effect of procedural safeguards in Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 179 (1951) (Douglas, J., concurring):

> It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law.

41. It seems clear that the source of the procedural protections in *Wajda* was the city ordinances and not case law or the due process clause. The Minnesota court recently reiterated its position that the due process clause does not protect liquor licenses because applicants have neither a liberty nor a property interest in a liquor license. *See* Country Liquors, Inc. v. City Council of Minneapolis, ___ Minn. ___, ___, 264 N.W.2d 821, 825-26 (1978) (en banc). *But see* Hornsby v. Allen, 326 F.2d 605, 610 (5th Cir. 1974) (due process requires a hearing with opportunity to cross-examine and a statement of reasons for denial of a liquor license). *See also* Giozza v. Tiernan, 148 U.S. 657, 661-62 (1893) (liquor license is not a right); Crowley v. Christensen, 137 U.S. 86, 91 (1890) (same).