Florida Law Review

Volume 18 | Issue 1 Article 13

June 1965

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be using the exception to escape the harsh results of the statute. Regardless of the courts' motives, the problems that are discussed above[28] will become more prevalent if the courts continue their present course. These cases demonstrate a need for the legislature to reconsider the basic policy underlying the Guest Statute. After reconsideration, the legislature should either reaffirm the policy of the Guest Statute by clearly limiting the application of the exception or abolish the Guest Statute and allow all passengers to recover for ordinary negligence.

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MANDAMUS: RIGHT OF LICENSEE COMPETITOR TO MAINTAIN PROCEEDING

Keating v. State ex rel. Ausebel, 173 So. 2d 673 (Fla. 1965)

Bernard Ausebel, an alcoholic beverage licensee, sought a writ of mandamus to compel the Director of the State Beverage Department of Florida to rescind an order reinstating the liquor license of a competitor, Shell's City, Inc. The trial court concluded that Ausebel as a beverage licensee competitor of Shell's City had standing to question the director's order and granted the writ on the merits. The First District Court of Appeal affirmed.[1] On certiorari the Florida Supreme Court HELD, although the issuance of the writ was not justified on the merits a licensee competitor has standing to petition for a writ of mandamus against a public official.[2]

28. See note 26 *supra* and accompanying text.

1. Keating v. State *ex rel.* Ausebel, 167 So. 2d 46 (1st D.C.A. Fla. 1964).
2. Keating v. State *ex rel.* Ausebel, 173 So. 2d 673 (Fla. 1965).

A citizen seeking to enforce a matter of public interest or any person establishing a clear right to relief based on a special interest or private right has standing to petition for a writ of mandamus against a public official.[3] Competitors have generally been denied standing because the commercial advantages are too uncertain to support a clear pecuniary interest. Thus petitions brought by a competitive railroad,[4] a low bidder on a public contract,[5] a turnpike corporation whose competitor was favored,[6] and a warehouse company competing for a government lease[7] have all been denied.

Several states have specifically denied standing to liquor licensee competitors to bring a mandamus action by saying that their interest is too remote, speculative, incidental, and merely part of the normal risk.[8] In *Baker v. State ex rel. Hi-Hat Liquors, Inc.*[9] Florida accepted the rule denying standing to licensee competitors. Two subsequent cases, although not mandamus actions, have followed the *Baker* reasoning.[10]

In the present case, Ausebel placed himself in the same category as the claimant in *Baker*, that of one with a special interest seeking to eliminate competition. But the court receded from *Baker* and granted standing to Ausebel justifying its decision by relying on two cases in which the plaintiffs sought to restrain acts of state officers favoring their competitors. The first case, *Volusia Jai-Alai, Inc. v. McKay*,[11] was decided on the merits without discussing the rights of the party to petition. *State ex rel. West Flagler Amusement Co. v. Rose*[12] apparently supports Ausebel's contention, but is clearly distinguishable. In that case the complainant was one of three dog tracks operating in Dade County and the right to petition for a writ of mandamus against the State Racing Commission was not challenged. The commission had acted in an arbitrary manner in apportioning racing dates which thus established a clear right to relief. Furthermore, in *West Flagler*

3. *E.g.*, State v. Cochran, 112 So. 2d 1 (Fla. 1959).

4. People *ex rel.* Moloney v. General Elec. Ry., 172 Ill. 129, 50 N.E. 158 (1898).

5. State *ex rel.* Johnson v. Sevier, 339 Mo. 483, 98 S.W.2d 677 (1936).

6. Bath Bridge & Turnpike Co. v. Magoun, 8 Me. 292 (1832).

7. United States *ex rel.* New York Warehouse, Wharf & Terminal Ass'n v. Dern, 68 F.2d 773 (1934), *cert. denied*, 292 U.S. 642 (1934).

8. Lexington Retail Beverage Dealers Ass'n v. Department of Alcoholic Beverage Control Bd., 303 S.W.2d 268 (Ky. 1957); Baltimore Retail Liquor Package Stores Ass'n v. Kerngood, 171 Md. 426, 189 Atl. 209 (1937), Annot., 109 A.L.R. 1259 (1937); Hanson v. Village Council of Romeo, 339 Mich. 612, 64 N.W.2d 570 (1954); Schreiber v. Baca, 58 N.M. 766, 276 P.2d 902 (1954).

9. 159 Fla. 286, 31 So. 2d 275 (1947).

10. Donovan v. Schott, 58 So. 2d 847 (Fla. 1952); Turner v. City of Miami, 160 Fla. 317, 34 So. 2d 551 (1948).

11. 90 So. 2d 334 (Fla. 1956).

12. 122 Fla. 227, 165 So. 60 (1935).

the racing dates were simply to be reallocated so that no competitor would be completely eliminated, whereas in the instant case if the writ were granted, Shell's City would be out of business completely with no recourse.

After ruling that Ausebel had standing to petition, the court reversed the holding of the district court and upheld the director's action. As to the parties involved, the same result could have been obtained by following *Baker* and denying standing. The court utilized *Ausebel* to establish guidelines for the protection of the rights of landlords under Florida's statutes governing revocation of liquor licenses.[13] The desire of the court to guarantee to landlords the right of due process in commendable, but in using *Ausebel* for this purpose the court reached an erroneous decision on the standing issue.

In receding from *Baker* the door has been opened to a flood of litigation by disgruntled licensees whose sole purpose is to be free from competition. To this they have no right. The court should distinguish *Ausebel* in the future and continue its position with the prevailing view that does not permit standing to litigious competitors.

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13. FLA. STAT. §561.68 (1963).