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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF)
JUST FOR FUN, INC.)
CIVIL ACTION NO. 98-858B
LOTTERY CASE NO. 98-1
DECISION AND ORDER

I. PROCEDURAL BACKGROUND

This matter came before the Court on Just For Fun, Inc.'s ("JFF") appeal of the CNMI Department of Finance's ("DOF") administrative order revoking JFF's lottery license. G. Anthony Long, Esq., represented JFF. Assistant Attorney General Michael Ambrose represented DOF. The Court, having jurisdiction over this matter pursuant to 1 CMC § 9112(b), having reviewed the memoranda, declarations, having heard and considered the arguments of counsel and being fully informed of the premises, now renders its written decision and order.

II. FACTS

On May 1997, DOF issued a Request for Proposals ("RFP") pursuant to the Commonwealth Lottery Commission Act ("Act"), as amended by Executive Order 94-3, inviting interested applicants to submit proposals for the establishment of lottery business. JFF submitted a timely proposal.

On December 1997, Numbers International, Inc. ("Numbers"), an applicant who also submitted a proposal for a lottery business, was granted a lottery operator's license. Numbers' license became effective on December 12, 1997 with an expiration date of July 28, 2003. Numbers was also given a renewal option for an additional five years.

1 On **January** 9, 1998, **DOF** issued a lottery license to JFF and the parties entered into a Lottery
2 Operator's Agreement. **JFF's** lottery license became effective on January 9, 1998 and was to remain in
3 effect until January 8, 2003 with an option for an additional five years. Numbers is **JFF's** competitor in
4 the lottery business as both JFF and Numbers service the same segment of the **community** as evidenced
5 in their respective Lottery Operator's Agreement.

6 JFF received a letter dated February 9, 1998 from **DOF** **notifying** JFF that **DOF** was seeking to
7 revoke JFF's lottery license on the grounds that it was void *ab initio*. **DOF** alleged that JFF was not in
8 compliance with its Lottery Operator's Agreement and began administrative proceedings to revoke JFF's
9 lottery license. **DOF** subsequently dropped its claim that JFF was not in compliance with the Lottery
10 Operator's Agreement.

11 On July 15, 1998, **DOF**, through its Administrative Hearing Officer ("Hearing Officer"), issued
12 its Administrative Order ("Order") annulling JFF's lottery license on grounds that Tattersall's of Australia
13 ("Tattersall's") had an exclusive lottery license issued by **DOF** prior to **DOF** soliciting proposals for
14 additional lottery operators pursuant to the May 1997 RFP. On August 14, 1998, plaintiff appealed the
15 Order with this court. JFF also filed a motion for stay. On September 4, 1998, **JFF** filed its memorandum
16 of appeal. On September 11, 1998, **DOF** filed its response to JFF's appeal memorandum. On September
17 21, 1998, JFF filed its reply.

18
19 **III. ISSUE AND STANDARD OF REVIEW**

20 Whether **DOF** exceeded its authority under the Act when it revoked JFF's lottery license?
21 Judicial review of agency action is *de novo*. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I.
22 362, 366 (1990). The standards for judicial review of agency action are established by the **NMI**
23 **Administrative Procedures Act ("APA")**. *Id.* The **APA** empowers the reviewing court to decide all
24 relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or
25 applicability of the terms of agency action. *Id.* at 366; *cf.* 1 **CMC** § 9112(f). In making such
26 determinations, the reviewing court shall hold unlawful and set aside agency action found to be 1)
27 arbitrary, capricious, an abuse of discretion or otherwise in violation of law, 2) contrary to constitutional
28

1 right or **power**, 3) in excess of statutory jurisdiction, authority, or limitation short of statutory rights. 1
2 CMC § 9112(f)(2).

4 IV. ANALYSIS

5 An administrative agency has no inherent or common law power and may only act in accordance
6 with the power conferred upon it by the legislature. *Rossler v. Morton Grove Police Pension Board*, 533
7 N.E.2d 927, 930 (Ill. App. 1989). Moreover, since agency regulations are subject to the **APA**, it cannot
8 be **afforded** the force and effect of law if it is not promulgated pursuant to the statutory procedural
9 minimum found in the Act. *Chrysler v. Brown*, 99 S.Ct. 1705, 1723 (1979); *See also Linoz v. Neckler*,
10 800 F.2d 871,878 (9th Cir. 1986). Additionally, an agency's interpretation **of its** governing statute cannot
11 conflict with the language chosen by the Legislature. *Bauer v. McCoy*, 1 CR 248,267 (D.N.M.I. 1982).
12 Therefore, if an administrative agency's action is not in accordance with law, a reviewing court must set
13 it aside. *Seman v. Aldan*, 2 CR 916, 924 (N.M.I. Trial Ct. 1986), *aff'd* 3 CR 152, 153 (D.N.M.I. App.
14 Div. 1987).

15 The authority of an agency must either arise from the express language of the enabling statute,
16 or devolve by fair implication and intendment from the express provisions of the statute as an incident
17 to achieving the objectives for which the agency was created. *Scalz v. McHenry County Sheriff's*
18 *Department Merit Commission*, 497 N.E.2d 73 1, 734 (Ill. 1986). In other words, an agency has no
19 authority except that expressly conferred upon it and is without power to extend its jurisdiction, as that
20 is a legislative prerogative. *City of Peoria v. Illinois Commerce Commission*, 477 N.E.2d 749, 75 1 (Ill.
21 1985). It, therefore, may not enact rules and regulations which enlarge, alter, or restrict the provisions
22 **of the** act being administered. *Jacobson v. Sunn*, 715 P.2d 813, 819 (Hawaii App. 1986).

23 A basic canon of statutory construction is that statutory language must be given its plain meaning.
24 *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12 (1992). **If the** meaning of a statute is clear, the Court
25 will not construe it contrary to its plain meaning. *Office of the Attorney General v. Deala*, 3 N.M.I. 110
26 (1992). As the Supreme Court has stated:

27 The judiciary is the final authority on issues of statutory construction and must
28 reject administrative constructions which are contrary to clear congressional
intent. If a court, employing traditional tools of statutory construction,

1 ascertains that Congress had an intention on the precise question at issue, that
2 intention is the law and must be given effect.

3 *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 104 S.Ct. 2778, 2781 n. 9 (1984).

4 Under the Lottery Act, 1 CMC § 9301 *et. seq.*, there is no language which purports to limit the
5 issuance of lottery licenses. The language of the statute also does not indicate nor does it confer any
6 power to the agency to procure a lottery license exclusively to one company. On the contrary, 1 CMC
7 § 9322 states in part that “[n]o persons other than those licensed by the Commission may operate or be
8 engaged in the operation of the lottery.” 1 CMC § 9322(a) (emphasis added). The statute further states,
9 in part, that prior to the issuance of a license, such factors as “[t]he sufficiency of existing licenses to
10 serve the public convenience” must be considered. 1 CMC § 93 13(a)(3) (emphasis added).

11 The import of the plural term in the Act clearly suggests that the legislature did not intend to limit
12 the issuance of a lottery license. *See also Administrative Order* at 1. The use of the plural term is
13 consistent with the legislature’s intent, in enacting the Lottery Act, “. . . to produce the maximum
14 amount of net revenues for the Commonwealth consonant with the general welfare of the people.” 1
15 CMC § 9301 (emphasis added).

16 It is not within the province of the court to read a meaning into a statute that is not warranted by
17 the legislative language. *See Niedbalski v. Board of Ed. of Sch. Dist. No. 24*, 418 N.W.2d 565 (Neb.
18 1988). Had the legislature intended to confer on DOF the power to issue an exclusive lottery license to
19 only one company, it clearly could have included a provision conferring such power.

20 Further, to allow DOF to revoke JFF’s lottery license after it had already been issued is quite
21 drastic. Such revocation is plainly outside DOF’s authority. *Cf. Douglas v. Beneficial Finance*, 469
22 F.2d 453,456 n. 2 (9th Cir. 1972). DOF’s power under the Act ought not to be extended so as to permit
23 unreasonably harsh action without very plain words. *See Brimstone R. Co. v. United States*, 48 S.Ct.
24 282,287 (1928). DOF’s actions in revoking JFF’s lottery license exceeded its authority under the Act,
25 and is, therefore, invalid.

V. CONCLUSION

For the foregoing reasons, **DOF's** Order is hereby **REVERSED**. It is **further** the order of this Court that **JFF's** lottery license be reinstated consistent with this decision.

SO ORDERED this 14th day of June, 1999.



JOHN A. MANGLONA
Associate Judge

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