

**CITY OF TRUTH OR CONSEQUENCES V. STATE, 1973-NMSC-005, 84 N.M. 589,
506 P.2d 333 (S. Ct. 1973)**

**CITY OF TRUTH OR CONSEQUENCES, a Municipal Corporation,
Plaintiff-Appellee,
vs.
STATE OF NEW MEXICO, DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL, CARLOS L. JARAMILLO, its Director, and
CHARLIE R. JONES, Defendants-Appellants**

No. 9501

SUPREME COURT OF NEW MEXICO

1973-NMSC-005, 84 N.M. 589, 506 P.2d 333

January 05, 1973

Appeal from the District Court of Santa Fe County, Campos, Judge

Motion for Rehearing Denied February 23, 1973

COUNSEL

GEORGE A. GRAHAM, JR., Truth or Consequences, New Mexico, Attorney for Appellee.

DAVID L. NORVELL, Attorney General, THOMAS L. DUNIGAN, Assistant Attorney General, ROY G. HILL, Special Assistant Attorney General, Santa Fe, New Mexico.

FREDERICK A. SMITH, Truth or Consequences, New Mexico (for Jones), Attorneys for Appellants.

JUDGES

McMANUS, Chief Justice, wrote the opinion.

WE CONCUR:

DONNAN STEPHENSON, J., SAMUEL Z. MONTOYA, J.

AUTHOR: MCMANUS

OPINION

McManus, Chief Justice.

{1} This suit was brought in the District Court of Santa Fe County by the City of Truth or Consequences, plaintiff, to set aside the transfer of a liquor license by defendant, Carlos L. Jaramillo, Director of the New Mexico Department of Alcoholic Beverage Control. The transfer was set aside and defendant appeals.

{2} We hold that the district court did not have jurisdiction to entertain an appeal from this particular action of the defendant. Section 46-4-9, N.M.S.A. 1953, provides for an appeal by "Any person aggrieved by a decision of a governing body pursuant to section 46-4-8 New Mexico Statutes Annotated * * *," but in this case plaintiff is not aggrieved by such a decision. Section 46-5-16, N.M.S.A. 1953, provides for an appeal from decisions concerning "the issuance or refusal to issue any additional license." In this case, however, there was a license transfer. Finally, § 46-6-6, N.M.S.A. 1953, deals with appeals from license revocations and suspensions, but not transfers.

{3} We know of no statute which allows an appeal from the action of defendant in transferring a liquor license. See also Taggader v. Montoya, 54 N.M. 18, 212 P.2d 1049 (1949), and Crowe v. State ex rel. McCulloch, 82 N.M. 296, 480 P.2d 691 (1971).

{4} Reversed.

{5} IT IS SO ORDERED.

OPINION ON REHEARING

McMANUS, Chief Justice.

The question of jurisdiction of the district court to hear the cause was not called {590} to the attention of the trial court below. However, the record indicates that appellee contemplated an appeal from the decision of the liquor director and we continue to note the lack of jurisdiction to hear such an appeal.

The motion for rehearing is denied. IT IS SO ORDERED.

WE CONCUR:

DONNAN STEPHENSON, J., SAMUEL Z. MONTOYA, J.