

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE PROTEST OF:)	SAN DIEGO DISTRICT OFFICE
)	
Dianne Jacob, County Supervisor, District 2, et al.)	File: 47-562483
Against the Issuance of a License To:)	
)	Reg: 16084762
Jamul Indian Village Development Corporation,)	
San Diego Gaming Ventures LLC)	Protestants' Demand for an Impartial
Dbas: Hollywood Casino Jamul)	Administrative Law Judge from the
14191 Highway 94)	Office of Administrative Hearings
Jamul, CA 91935-3213)	
_____)	

Based upon the reasons set forth in Administrative Law Judge John Lewis' recusal letter of January 11, 2017, and the evidence in the public record of Acting Director Ramona Prieto and General Counsel Peter Williams having had improper ex parte communications with a presiding officer about this proceeding, which ex parte communications are both prohibited by Government Code 11430.10, which were made public and not sealed under Government Code 11430.60, Acting Director Ramona Prieto, the Department, and Administrative Law Judge John Lewis, have been disqualified from adjudicating any matter in this proceeding.

Therefore, Protestants hereby demand that this Proceeding be concluded before an impartial and unbiased administrative law judge from the Office of Administrative Hearings, pursuant to Government Code 27727, so as to avoid any further appearance of impropriety or bias with the Department of Alcohol Beverage Control's Administrative Hearing Office.

There is substantial evidence in the record of these proceedings that such improper ex parte communications were made, at a minimum, to improperly influence the outcome of these proceedings, but just as likely, to disqualify Judge Lewis from adjudicating this matter, after he overruled the Department's spurious and erroneous jurisdictional objection and publicly ruled that the Protestants had every right to raise the Applicants' failure to meet their burden of proof to

demonstrate that they were not operating a public gambling nuisance on land that does not qualify for Indian gambling, since it is undisputed that the Jamul Indian Village was not under federal jurisdiction in 1934.

The Department of Alcohol Beverage Control is not allowed to taint the impartiality of these proceedings by causing the disqualification of any of the presiding officers, particularly one who has indicated on the record an inclination to fairly hear Protestants' reasons why the Applicants cannot qualify for a liquor license on premises where they are operating a *per se* public gambling nuisance. *Dept. Of ABC v. ABC Appeals Board* (2006) 40 Cal.4th 1, 16-18, reversing the Department's orders for violating the parties' due process by engaging in ex parte communications with the agency head or person to which the power to hear or decide the proceeding has been delegated.

Protestants need not have to prove that such improper ex parte substantive comments as to whether any issue in this proceeding may have been discussed in prior court decisions, actually affected or potentially will affect the outcome of this proceeding; the mere fact that the Acting Director and another agency's General Counsel improperly attempted to affect the outcome of these proceedings by their email is sufficient to disqualify any of the employees of either Department from adjudicating this proceeding.

Because, "proof as to how a particular ex parte contact weighed in an agency decision maker's calculus would be impossible to come by without inquiry into matters beyond the ken of any court...the APA does not require such proof; perhaps because such proof is unattainable, the APA prophylactically outlaws any substantive communications or advice..." to an agency decision maker. The party faced with such a communication need not prove that it was considered; conversely, the agency engaging in ex parte discussions cannot raise as a shield that the advice was not considered. Under the APA, the mere submission of ex parte substantive comments [to the Department's final decision maker or presiding officers], without more is illegal. Government Code 11430.10(a)... The

APA's administrative adjudication bill of rights was designed to eliminate such one-sided occurrences. We will not countenance them here. Thus, reversal of the Department's orders is required." *Dept. Of ABC v. ABC Appeals Board* (2006) 40 Cal.4th 1, 16-17.

Therefore, since the head of the Alcohol Beverage Control Department and the General Counsel for the Business, Consumer Services and Housing Agency have so tainted the proceedings in this matter, Protestants due process requires the appointment of an independent administrative law judge that is not within the purview and control of either Department to conclude the adjudication of these proceedings. Moreover, the APA's administrative adjudication bill of rights demands no less.

Dated: January 20, 2017

WEBB & CAREY APC

/s/ Patrick D. Webb

Patrick D. Webb

Attorneys for Represented Protestants