

NMDPS - LIQUOR CONTROL ACT – ADMIN HEARING

Another tool to fight DWI is an admin hearing. Agents of the Special Investigations Division (SID), NMDPS, did sting operations at two Town & Country stores in Clovis, New Mexico. In store #241 a minor showed a license saying he was not yet twenty-one years old. He was given beer. In #248, the minor was given beer without being asked for ID or about his age.

Both stores and clerks were issued citations for violating the Liquor Control Act, NMSA 1978, Section 60-3A-1. The NM Regulation and Licensing Department appointed a hearing officer who found a violation. Based upon the finding, the Department imposed a \$1,000 fine and a one-day suspension of alcohol sales.

Defendant argued criminal liability must be found before a civil penalty can be imposed. But the Court of Appeals disagreed, holding there is no requirement that there must be a criminal conviction before an administrative penalty can be imposed. One does not have to occur before the other.

Here, there were no criminal penalties. For #241, the DA dismissed charges after the store clerk completed a pre-prosecution program. For #248, the DA used a conditional discharge which means no finding of guilt after a plea is entered. An admin hearing is an effective way to reduce sales of alcohol to minors. Town & Country Food Stores v. New Mexico Regulation & Licensing Department (2012)

ADA Elliott Guttman, Law Enforcement Academy

