

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF MOTOR VEHICLES,
Appellant,
vs.
WILLIAM JUNGE,
Respondent.

No. 49350

FILED

JUL 07 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judicial review and reversing an administrative hearing officer's decision upholding the Department of Motor Vehicle's denial of respondent's application to renew his personalized license plate. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

In 1999, respondent Junge applied for and received a personalized license plate HOE. Although Junge would have preferred TAHOE for his plate message, he settled on HOE because his first choice was unavailable. For his plate background, Junge initially selected the Lake Tahoe panoramic setting to adorn his 1999 Chevy Tahoe.

For many years, Junge had no problem renewing his personalized plate. In fact, he did so in person at the DMV. In 2003, when he decided to switch his license plate background to the blue backing, he submitted a new application for the HOE plate. The DMV approved the application without issue. Over the next two years, he renewed the plate in person and without problem.

In 2006, Junge appeared in person to renew the plate, as was his custom. This time, however, the DMV technician left a note for her supervisor requesting a plate review. Upon consulting Urban Dictionary,

the supervisor determined that HOE was slang for “whore.” Without referring to any other source, the supervisor submitted the plate to DMV’s special plate committee. In her submission, she advised the committee that based on her review of Urban Dictionary, the HOE plate was inappropriate. After a unanimous vote, DMV recalled Junge’s personalized plate.

Junge then requested an administrative hearing. However, the administrative hearing officer upheld the recall, concluding that NRS 482.3667, NRS 482.3669 and NAC 482.320 allow DMV to prohibit any combination of letters and numbers that may be offensive.

When Junge petitioned for judicial review of the administrative hearing officer’s decision, the district court granted the petition and reversed. DMV then appealed, arguing that the district court improperly substituted its own judgment for that of the administrative hearing officer. For the reasons set forth below, we disagree with the DMV’s contentions.

We review an administrative hearing officer’s decision to determine if it is based on substantial evidence. State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986). Substantial evidence is that which “a reasonable mind might accept as adequate to support a conclusion.” Id. (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Moreover, “[w]hen a decision of an administrative body is challenged, the function of this court is identical to that of the district court.” Gandy v. State ex rel. Div. Investigation, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980). Thus, we afford no deference to the district court’s ruling in judicial review matters involving an agency’s decision. Kay v. Nunez, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006).

At the administrative hearing, Junge offered considerable evidence to explain why his personalized plate was not offensive or inappropriate. Junge testified that he considered his vehicle and license plate to operate together, creating a Lake Tahoe theme. He supported this position with further testimony that his first choice for the personalized plate, TAHOE, was not available. Junge also noted that the DMV had not received any complaints about his license plate. Finally, Junge argued that the correct spelling of the slang word for whore is “ho” and not “hoe.” See Merriam-Webster’s Collegiate Dictionary 590, 591 (11th ed. 2007).

In contrast, by its own admission, DMV based its decision solely on the Urban Dictionary. Moreover, DMV revealed a policy of only consulting Urban Dictionary to determine if a word is inappropriate or offensive.

Urban Dictionary is predominantly an online dictionary, although a paper version based on the online content was published in 2005. See <http://www.urbandictionary.com/book.php> (last visited June 10, 2009). Its definitions are user contributed and are generally anonymous. There is no limit to the number of definitions that a user can contribute. Since definitions are user contributed, they can be personal to the user and do not always reflect generally accepted definitions for words. See generally <http://www.urbandictionary.com/tos.php> (last visited June 10, 2009).

In fact, Urban Dictionary acknowledges that “[i]ts content is frequently presented in a coarse and direct manner that some may find offensive.” See <http://www.urbandictionary.com/tos.php> (last visited June 10, 2009). Moreover, Urban Dictionary readily admits that it “cannot control all [c]ontent posted by third parties to the [w]ebsite, and does not

guarantee the accuracy, integrity or quality of such [c]ontent.” Id. Furthermore, Urban Dictionary concedes that it “does not and cannot review all [c]ontent posted to or created by users accessing the [w]ebsite.” Id. Thus, Urban Dictionary allows, if not encourages, users to invent new words or attribute new, not generally accepted meanings to existing words.

We acknowledge that the Iowa Supreme Court upheld the use of Johnathan Green’s Contemporary Dictionary of Slang (1985) to review personalized license plates in McMahon v. Iowa Dept. of Transp., 522 N.W.2d 51, 55-56 (Iowa 1994). Nonetheless, we conclude that this case is distinguishable because Urban Dictionary allows for anonymous, user contributed content. Moreover, without any review of the definitions posted on Urban Dictionary, there is a substantial danger that the definitions will not be generally accepted. Therefore, the DMV’s practice risks prohibiting words or phrases based on meanings that are not commonly known or recognized, even as slang terms.


Additionally, we note the potential influence that the DMV supervisor had over the special plate committee. Not only did the supervisor sit on the committee, she included her determination that HOE is an inappropriate and offensive word in her request for a vote on the plate.

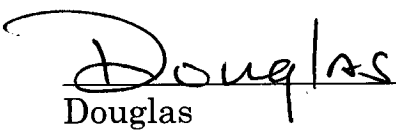
Based on the foregoing, we conclude that a reasonable mind would not accept the Urban Dictionary entries alone as adequate to support a conclusion that the word HOE is offensive or inappropriate. Given the evidence provided by Junge at the administrative hearing, the hearing officer’s reliance on the Urban Dictionary entries is even more questionable. Therefore, we conclude that the administrative hearing

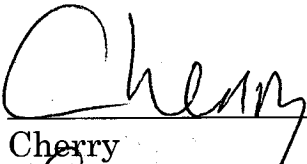
officer's decision was not supported by substantial evidence because, like the DMV, it relied solely on Urban Dictionary. Accordingly, we

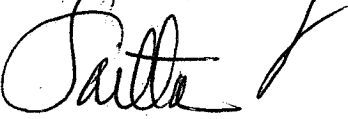
ORDER the judgment of the district court AFFIRMED.

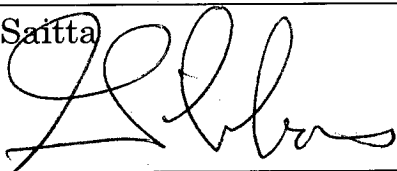

_____, C.J.
Hardesty



_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge
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