

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
TWELFTH DIVISION**

**UNITED BEVERAGE RETAILERS  
OF ARKANSAS, INC.; JOHNNY  
AKINS, PRESIDENT; JOHNNY  
AKINS, INDIVIDUALLY**

**PLAINTIFFS**

**VS.**

**NO. 60CV-21-4346**

**ARKANSAS DEPARTMENT OF FINANCE  
AND ADMINISTRATION; ALCOHOLIC  
BEVERAGE CONTROL; DORALEE CHANDLER,  
DIRECTOR OF THE ALCOHOLIC  
BEVERAGE CONTROL;  
NICHOLAS KELLEY; COSTCO WHOLESALE  
CORPORATION and COSTCO WHOLESALE #1442;  
AND JOHN DOES 1 – 5**

**DEFENDANTS**

**ORDER**

On this date, the Court hereby FINDS and ORDERS:

1. On July 16, 2021, Plaintiffs filed an appeal pursuant to the Arkansas Administrative Procedures Act ("APA") of the Alcoholic Beverage Control Board's ("ABC Board") final agency action and decision allegedly granting transfer and use of a retail liquor permit to Nicholas Kelley, Costco Wholesale Corporation, and Costco Wholesale #1442. Plaintiffs ask this Court to reverse the ABC Board's decision and also ask that the Court enter an immediate preliminary injunction or a temporary restraining order pursuant to Arkansas Rule of Civil Procedure 65.

2. Administrative agencies are required to issue findings of fact and

conclusions of law.<sup>1</sup> The ABC Board's findings of fact and conclusions of law are not in the record of this case. Further, the record does not reflect whether the ABC Board's decision has been reduced to writing.

3. The APA requires that copies of a petition seeking judicial review of a final agency action be served upon the agency and all other parties of record in accordance with the Arkansas Rules of Civil Procedure.<sup>2</sup> The record does not reflect that any Defendants have been served.

4. Absent exceptions not pled by Plaintiffs, review by this Court is confined to the record of the proceeding under review.<sup>3</sup> As no Defendants have been served, the record before the ABC Board has not been transmitted to this Court.<sup>4</sup> As this is an appeal of an agency decision, at this point, the Court should consider only the record made before the ABC Board, rather than an affidavit presented with the Complaint, and at the very least cannot enjoin or restrain the enforcement of an agency decision that has not been presented to this Court.

5. The Court does not have sufficient information or evidence from which it could

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<sup>1</sup> *Arkansas State Bd. of Licensure for Prof'l Engineers and Prof'l Surveyors v. Callicott*, 2016 Ark. App. 476, \*5, 503 S.W.3d 860, 864 (stating that the APA requires that an administrative adjudication be accompanied by specific findings of fact and conclusions of law); *see also* Ark. Code Ann. § 25-15-210(b).

<sup>2</sup> Ark. Code Ann. § 25-15-212(b)(2).

<sup>3</sup> Ark. Code Ann. § 25-15-212(g).

<sup>4</sup> Ark. Code Ann. § 25-15-212(d)(1) (providing that the agency shall transmit the administrative record to the reviewing court within 30 days after service of the petition or within such further time as the court may allow, not exceeding 90 days).

make the necessary findings and conclusions to grant an immediate preliminary injunction or a temporary restraining order.<sup>5</sup> The request for an *ex-parte* immediate preliminary injunction or temporary restraining order is hereby denied.

IT IS SO ORDERED.



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CIRCUIT JUDGE

\_\_\_\_\_  
DATE

7-19-21

cc: James A. Simpson, Jr.  
Attorney for Plaintiffs  
*Via electronic filing*

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<sup>5</sup> Because Defendants have not yet been served, it appears that, at this stage, Plaintiffs are seeking a temporary restraining order under Rule 65(b)(1).