

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Greenwich Bay Clam

AAD No: 91-003/ENE

DECISION AND ORDER

This matter is before this Hearing Officer on the Motion to Suppress filed by Greenwich Bay Clam Co., Inc. ("Respondent") in the above-entitled case. An objection was filed by the counsel for the Division of Enforcement ("Division"). Respondent requested oral argument and after several scheduled dates, arguments were finally heard on October 25, 1991.

The parties agree that R.I.G.L. § 20-6-24 is the governing statute. It provides in pertinent part:

20-6-24. License for shellfish buyers--Suspension or revocation.--(a)

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(f) The director of the department of environmental management and his or her agents are authorized to enter and inspect the business premises, appurtenant structures, vehicles, or vessels of any shellfish buyer and to inspect records maintained by a shellfish buyer for the purpose of determining compliance with the provisions of this section and any rules, regulations, or orders issued thereunder, and no person shall interfere with or obstruct the entrance or inspection of the director or his or her agents of those business premises, appurtenant structures, vehicles, or vessels.

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Respondent has moved to suppress any and all evidence, both documentary and testimonial, which Respondent contends was evidence which was gathered and/or flowed from a warrantless inspection conducted by the Division of Respondent's "buy boat," the Snug Harbor. Respondent's basic contentions are twofold.

First, Respondent maintains that R.I.G.L. § 20-6-24 (f) does not preclude the requirement of an administrative search warrant prior to the Division's conducting an inspection. Respondent suggests that the statute should be applied in this manner thereby requiring the issuance of an administrative warrant prior to the inspection. Since there is no dispute that a warrant was not obtained, Respondent maintains that all evidence flowing from the search/inspection should be suppressed.

The Division counters that the language of R.I.G.L. § 20-6-24 is purposeful in granting regulatory access without requiring a warrant. They contend Section (f) provides an intentional statutory right of access to the "buy boat" of the Respondent.

R.I.G.L. § 20-6-24 is clear and unambiguous. It is manifest from a reading of that statute that the legislature has authorized the director's agents to enter and inspect, inter alia, vessels of a licensed shellfish buyer for the sole purpose

of determining compliance with § 20-6-24 and any rule, regulation or order issued thereunder. It is a well-established tenet of statutory construction that when the intention of the legislature is so apparent on the face of a statute that there can be no question as to its meaning, there is no room for construction. Sutherland on Statutory Construction, § 46.01 at 81(5th ed.) The foregoing is commonly referred to as the "plain meaning" rule, and I believe application of this rule is warranted in the instant matter.

Generally, if there is no ambiguity or obscurity in the language of the statute, there is no need to resort to legislative intent or construction. Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055 (R.I. 1991); Gilbane Company v. Poulas, 576 A.2d 1195 (R.I. 1990); O'Neil v. Code Commission for Occupational Safety and Health, 534 A.2d 606 (R.I. 1987). A plain reading of the statute supports the Division's position that under § 20-6-24, a warrant is not required.

Accordingly, the evidence acquired in the course of the inspection of Respondent's buy boat was obtained in conformance with the grant of authority conferred by R.I.G.L. § 20-6-24.

Respondent's second ground for the suppression of evidence is that R.I.G.L. § 20-6-24 is unconstitutional. Respondent argues that the authorization of a warrantless administrative search violates the protections afforded by the Fourth Amendment to the U. S. Constitution and that such protections are usually applicable to commercial structures and/or vessels. Respondent acknowledges that the administrative setting differs from traditional fourth amendment warrant situations but argues that, at a minimum, an administrative warrant issued by a judicial officer is required. Absent such a protection, the statute and inspection are unconstitutional thereby rendering the evidence inadmissible under the Fourth Amendment.

Administrative hearing officers, and ultimately the Director, are not empowered to decide the constitutionality of state statutes. Although an administrative Hearing Officer is empowered to review, interpret and adjudicate matters concerning statutes and regulations under his/her jurisdiction, an administrative hearing officer's expertise does not extend to the determination of issues of constitutional law. Bowen v. Hackett, 361 F. Supp. 854, (D.C.R.I. 1973).

Accordingly, I am without jurisdiction to entertain the Motion to Suppress to the extent that it is based on an underlying finding that R.I.G.L. § 20-6-24 is unconstitutional.¹

Based on the foregoing, Respondent's Motion to Suppress is DENIED.

Entered as an Administrative Order this 10th day of March, 1992.



Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th floor
Providence, RI 02908

¹ Although I am without jurisdiction to determine the constitutionality of the statute, the issue may, in any event, be moot. The U.S. Supreme Court in the case of Illinois v. Krull, 480 U.S. 340 (1987) held that the Fourth Amendment exclusionary rule does not apply to evidence obtained by police who acted in objectively reasonable reliance upon a statute authorizing warrantless administrative searches, but which is subsequently found to violate the Fourth Amendment.

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CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded via regular mail, postage prepaid to James E. Kelleher, Esq., Revens, Blanding, Revens & St. Pierre, 946 Centerville Road, Warwick, RI 02886-4373 and via interoffice mail to Claude Cote, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this ~~15th~~₁₃ day of March, 1992.

Tracy Shields

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