ORAL ARGUMENT – 10/10/01
00-1069
GARZA V. TABC

DOGGETT: The 8th CA has ruled that TABC §11.67 requires not only that an appeal of a denial of a license be heard within 10 days, but that the judge also must render his decision within that same 10-day period. The court has also found that the judge in this case did no render his decision within the 10-days.

If we accept the 8th CA's finding and its interpretation of the statute, it brings us squarely to the issue of whether or not the statute was constitutional as it applied to Mr. Garza in this case.

Garza had pursued months of hearings in an effort to have his license renewed. He had timely filed all pleadings and had timely filed all post-hearing pleadings. Despite this, for reasons completely out of his control, the TABC would have you interpret the statute to deny him all relief. We believe this is a violation of due process, and a violation of due course of law under the Texas constitution.

BAKER: Did you raise those arguments in the TC?

DOGGETT: Yes we did. We also believe that this is a violation of the open courts provision of the Texas constitution.

O'NEILL: The CA did not address any of these arguments in its opinion. Were they raised there?

DOGGETT: They were raised there and the CA did not address that. One of the arguments that TABC makes as to why such a harsh interpretation of the statute does not violate the constitutional provision is because we are dealing with a license, which they say is a privilege rather than a right. However, there are numerous cases cited in the brief, which hold that a licensee cannot be deprived his license without due process.

JEFFERSON: Why didn't you at the point that the TC said he was not going to render his decision within the 10-day period, like the state did, apprize the court that that was a necessary ruling he had to make within that time period, and if he continued to resist making the ruling within the 10-days why did you not seek mandamus at that point to require him to rule?

DOGGETT: First as to why we didn't tell the judge that, we didn't disagree with what TABC had told the court. We didn't say we thought they were wrong. We had no disagreement with their urging the court to rule within 10 days. As to why we didn't mandamus, it puts you in a tricky position. I don't know that mandamus would make any difference under TABC's position in this

case. You can't mandamus before the 10 days is up. After the 10 days is up under TABC's interpretation you are dead.

HANKINSON: But the judge indicated to you that he really wasn't going to worry about the time period, because he was in the middle of a lengthy trial, so that he would get to it when he could. So you at that point in time could have anticipated that he wasn't going to rule within 10 days.

DOGGETT: My recollection of what he said was, I'm in the middle of an 8-week jury trial. I don't know whether I'm going to be able to get to this in time. And so we didn't know what he was going to do. We hoped he would rule within the 10 days.

JEFFERSON: Well he said he wasn't going to be confined by the 10-day rule.

DOGGETT: I don't dispute that.

JEFFERSON: So you were at least under notice that a ruling may occur after the 10-day period?

DOGGETT: That's right. But I feel if we had sought a mandamus before the 10-days was up, an appellate court probably would have said we are premature, the 10 days is not up. And again under the TABC's interpretation of the statute, once the 10th day goes by your appeal is dead regardless of whether you sought mandamus.

We feel that this interpretation of the rule that the case must be decided within 10 days is an unfair restriction on a licensee's right of appeal. It almost renders a right of appeal meaningless. You need to consider how this works. Depending on the day of the week that you file your appeal, if you work with a calendar you will have somewhere between 6 and 8 working days to actually hear the appeal. And included in that 6 to 8 working days, you have to get notice to TABC of when the hearing is going to be. And I believe that under due process they are entitled to some reasonable length of time to be noticed of the hearing. And I would argue to be at least 3 days that they have notice. So your time is really compressed under this 10 day rule to just a few working days.

Also, this statute does not take into account what the DC's prior schedule may be. And as in this case he was engaged in a trial. So our position is it's just totally unreasonable to expect a district judge some time between 6 to 8 workings days, regardless of what he may already be engaged in, to have to hear the arguments in the case, review the record and render a decision within the 10-day period.

PHILLIPS: Do you think it's such a short deadline that it always violates the constitution no matter what the subject matter is?

DOGGETT: That would be our position, but at the very least...

PHILLIPS: So on an abortion case or an election contest, the legislature could not require this particular rule?

DOGGETT: No. I think in certain kinds of cases they could.

PHILLIPS: You have to distinguish your type of case from some other type of case?

DOGGETT: Yes. And we would argue that even if you don't rule blanket that it's unconstitutional, it certainly was unconstitutional as applied to us in this case.

ENOCH: You mentioned that a couple of times as applied. What is it that's the circumstance of your client that would make it unconstitutional as applied there without making it unconstitutional generally in all cases dealing with _____?

DOGGETT: I think it's 's fact specific to our case, that our client was always diligent and timely in everything that he had filed. The size of the record in our case, which was unusually large I think for a licensing proceeding, and the fact that the district judge was heavily engaged in a lengthy trial, I think those three things combined, and the fact that once we filed our appeal and had it heard, it was out of our hands. There's nothing else we could have done we don't believe.

ENOCH: So as applied is it's no fault to the litigant. That's what you mean by as applied. If the litigant comes in and says it's not my fault he didn't rule within the 10-days, then under those circumstances if the rule is applied it's unconstitutional?

DOGGETT: I think that's a fair reading. And certainly you could envision a scenario perhaps where you had had a short record, and you had a short argument and the judge might not have had anything to do and just not ruled. Maybe you had a judge who just didn't want to rule. I don't think that's fair to the petitioner or the appellant who has done everything he possibly can to have his case _____ out under those circumstances.

JEFFERSON: Let me ask you to interpret 11.67(b)(2): the case shall be "tried before a judge within 10 days from the date it was filed", and your explanation of what does tried mean?

DOGGETT: We do not agree with the Cook v. Spears interpretation that trial necessarily includes the rendition of a judgment. There are other cases that talk about - when they talk about rendition and judgment, they talk about that being a separate step occurring after the trial. And certainly, we would urge the court to interpret - we believe that it is open to interpretation that trial does not necessarily include rendition.

OWEN: What's the point of the statue that only puts a 10-day limit on when you actually have to have the trial completed, but no limits on when rendition of judgment must occur?

DOGGETT: What the point is is that it would allow for the coverage of a situation like we

have here, where you have a busy judge, you have a voluminous record, you have many issues, and the judge simply couldn't get to it in time. It doesn't cost a man like our client his license. I mean he had run that business for years.

OWEN: Help me think why the legislature would have said, it's very, very important that you hear the evidence and have the evidence concluded and have the court trial concluded within 10 days, but we're not going to put any time limit on when the judge has to render a judgment. Can you offer some reason why they would make that distinction?

DOGGETT: I think that there is a whole line of cases that considered the word "shall". And in those cases they talk about whether it's mandatory, or directory. And in many of those cases the ruling has been that "shall" doesn't really mean shall in the sense that if you don't do it within the time limit, the litigation stops. And those cases have said that "shall" simply means - there seems to be a split. There is a Lewis case, a SC case which I cite in my brief, where it's an administrative hearing case, where they ruled that "shall" is not mandatory. It's merely directory.

There is another line of cases dealing with forfeitures, drivers license suspension hearings, ALR hearings that say "shall" is mandatory, but even though it's mandatory it does not mean that the court loses jurisdiction if they don't act within the deadline.

And I would say that this statute ought to be interpreted the same as those cases. "Shall" means you ought to do it; it's either mandatory or directory. It's designed to encourage the prompt and speedy resolution of the cases.

HANKINSON: So we are going to have to overrule our case law that interprets this statute to the contrary or to rule for you on the statutory interpretation question. Is that correct?

DOGGETT: To the extent that Cook v. Spears clearly holds - if it holds that trial includes rendition and it must be done within 10 days or the court loses jurisdiction - yes.

HANKINSON: And you agree the case says that?

DOGGETT: Yes, I think it does say that.

JEFFERSON: One other case cited by the other side is the Lawyer's Lloyds case, that says "trial includes every step taken in the determination of the issue between the parties, and, therefore, include the hearing on a motion for new trial," which we would be a post judgment _____. Can you distinguish Lawyer's Lloyds?

DOGGETT: No, except that there is also some language in Lawyer's Lloyds that points out, it uses the word "actual" trial. And they distinguish that and say that the actual trial is the presentation of the evidence and the arguments leading up to the rendition of judgment. And our position would be that you could interpret trial in this statute simply to mean the presentation of the

evidence and arguments leading up to the rendition of the judgment.

PHILLIPS: What's the res judicata effect of this ruling? If you were denied this writ and there's a final judgment here, what remedy does your client have?

DOGGETT: My client's license is suspended, and has been suspended...

PHILLIPS: It's gone now. How can he go about getting it back?

DOGGETT: Well the only thing he could do would be to apply for a new license.

PHILLIPS: Do you have to show changed circumstances from what the circumstances were in the last trial? I'm just trying to understand in terms of whether or not the 10-day rule might be constitutionally _____, the effects of that ruling surely would have to be taken into account.

DOGGETT: All I can tell you is the practical effect in this case is that my client has lost his license and hasn't been able to operate as he was before he lost his license.

ENOCH: Mr. Garza had a license, he has not _____ a renewal of that license. Is he forever barred from ever getting a liquor license?

DOGGETT: No. I think he could...

ENOCH: When is the next time he could get a liquor license as a result of having not been granted the license this time?

DOGGETT: I think you can apply anytime.

ENOCH: And when you reapply, is the reapplication affected by the fact that there's bee a determination that he was not allowed a license earlier?

DOGGETT: I think, yes. If he applied for the same license at the same location doing the same thing, I think basically there would be an argument that was res judicata.

PHILLIPS: That would last for how long? Forever?

DOGGETT: I don't know the answer.

PHILLIPS: But don't we have to know something about that in order to decide whether or not there's a constitutional deprivation?

DOGGETT: Our position would be it's already been a constitutional deprivation. He's been out of business for well over 1 year. It's shut down. He's deprived.

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RESPONDENT

HELMCAMP: I represent the TABC, and on their behalf today we respectfully ask this court to do two things. The first thing we ask you to do is affirm the judgment of the 8th CA in El Paso dismissing plaintiff's appeal for want of jurisdiction, because they failed to secure a hearing, a trial, which includes both a hearing and the rendition of judgment within the 10 days...

O'NEILL: Well let me ask you about that. Isn't there something inherently unfair here? They did everything they were supposed to do. What would be wrong with going with the dissenting opinion in the CA? What problems do you see with that?

HELMCAMP: I certainly don't disagree that it may well be unfair. But I believe that this is a statutory scheme that the legislature carefully crafted as long ago as 1935. That's the first time we really have the predecessor of §11.67.

O'NEILL: But it seem that in crafting this requirement that the concern was that the TC's wouldn't hear and decide quickly enough. I would find it hard to believe that the legislature would try to cut off someone who did everything they were supposed to do, and the TC just didn't do what they were supposed to do.

HELMCAMP: It certainly is problematic, but I think there are a number of practical answers to it. Number 1, the plaintiff controls the timing of the case. Under the alcoholic beverage code and the administrative procedures act, they have 30 days after the rendition of a final agency order to file the petition. So the plaintiff controls the timing of the filing of the lawsuit. In any case, the plaintiff can approach the court administrator knowing about the 10-day rule to try to find that optimum window - when might the court be available: I've got a problem because I need to get this case heard within 10 days or my client's right to judicial review may be lost. You could file it on the 10th day, the 20th day or the 30th day depending.

The second thing that can be done is working with the judicial officials to either find a visiting judge to hear the case, or work some arrangement out so that the case can be heard.

O'NEILL: But what if you do all that, and you're still right back where we are?

HELMCAMP: If you do all that, you are absolutely correct. The court has lost jurisdiction to decide or it's powerless to grant the relief sought.

O'NEILL: So acknowledging the unfairness, what would be wrong with going with the dissenting opinion's approach in this case?

HELMCAMP: I think the dissenting opinion's approach would violate, and I guess the best

way to say it is, I think there's a balancing act here between the public policy that I believe underlies the statutory section and the right of an individual, such as the respondent in this case, to exercise a privilege. It seems to me that in crafting this scheme and in putting in all the restrictions and the time lines, and no trial by jury, and judge alone, and all the other things that are in there, the legislature in the exercise of its wisdom has carefully balanced the private privilege of the individual to have a liquor license and run a bar with the need to protect the public's health, safety and welfare. And those are competing issues.

O'NEILL: And why doesn't the dissenting opinion's approach also balance those competing issues? When someone's done everything they are supposed to do, why can't we just say when the 10-days runs, you can then go get a mandamus to get the TC to render a decision immediately?

HELMCAMP: If this court chose to do that, you certainly could. But I think in doing so, you would have to basically overrule the court's precedence in the 1975 cases of Cook v. Spears and Cook v. Walker.

O'NEILL: Not necessarily. You could just say that the statute was directory couldn't you? Couldn't we follow that line of cases and distinguish those?

HELMCAMP: I think it's even stronger than that, because the statute also includes some words that I think are the most unusual words I've ever seen in a statute. The legislature says these provisions shall be construed literally.

I would also point out that up until 1981, and this is continuously basically from 1937 to 1981, the statutory provision also included the phrase "these causes shall be advanced above or in front of all causes of a different nature."

It indicates to me that in crafting this scheme, the legislature meant what it said and said what it meant.

HECHT: Well but it didn't say "or what." It didn't say "shall" or "what."

HELMCAMP: That is correct.

HECHT: And we said the "or what" and they didn't. And they could just have well have meant the trial judge must try this case within 10-days or else mandamus.

HELMCAMP: It's dismissed or you've lost jurisdiction.

HECHT: But you can't tell.

HELMCAMP: You cannot tell and I don't disagree with that. You have to look I think to the

totality of the statutory section, all the other provisions taken together. For example, and in the first instance, this court has provided the "or what" in 1975 in Cook v. Spears and Cook v. Walker. The "or else" is the TC may not render any relief granted. The "or else" is that anything that occurs after that time is null and void.

JEFFERSON: In those cases were the issues tried within the 10 day period?

HELMCAMP: They were not.

JEFFERSON: And in this case were the issues tried within the 10-days?

HELMCAMP: I'm glad you used the word "tried". Because that's I guess the meat of the coconut in essence. There was a hearing on the 10th day. There's no question about that. That occurred on Jan. 16, 1998. And I did not argue in the CA because the 10th day technically fell on Martin Luther King day, that's out of the issue at all. So the real judgment had to be rendered by Jan. 20. And as you know from the record what we have in this case is an order signed by the court on Jan.28. You know from the record in the CA's opinion that the attorneys representing the City of Rosenburg, which was the primary protestor. So the case was not tried within 10 days.

JEFFERSON: But the hearing was held within 10 days?

HELMCAMP: The hearings was held within 10 days.

JEFFERSON: Let me again ask you about 11.67(b)(2), the case shall be tried before a judge within 10 days. The trial is as Lawyers Lloyd seems to indicate, everything that disposed of the case, including all post judgment hearings. In these cases, would someone in the plaintiff's position be entitled to file a motion for new trial?

HELMCAMP: Yes. I don't know why the court took this case, or why 4 of you voted to _____, what particular issue caught your attention or fancy. But I can tell you this, there is a split as I pointed out in my brief between four of the CA's around the state. The split is that the 1st and the 13th are joined together, the 4th and 14th are joined together in terms of what happens after that 10-day period runs. In all four of the cases that I cite in my brief, Fox v. Medina, McBeth v. Riverside Inn, El ___ v. TABC, and TABC v. Top of the Strip, there was a hearing within 10 days and there was a rendition of judgment within 10 days. Sometimes it was orally pronounced in court in the presence of the parties. S&A Restaurant v. Leo tells us means rendition. Sometimes it was simply a written order.

The split comes in what can the court do afterward? I have suggested, not knowing again exactly what issue the court wants to grapple with, a clear or bright line test that would not only resolve the conflict between these four CA's, but it will give finality and it will give uniformity of practice among every DC in the state and every CA in the state that deals with these issues. And that is this. In appeals from commission orders, the TC must try and render judgment

in the case within 10 days of the filing of the suit. Failure to hold the hearing and render judgment within the statutory period renders the court powerless to take any action or grant the relief sought. This is important, because I know this court is concerned about finality of judgments, and I've seen this in many of your prior opinions. What happens in this case, unlike many say general civil cases between private litigants is there is finality, because there is a commission order that will be affirmed by operation of law. That's exactly what happened in this case.

OWEN: You say if rendition doesn't occur within the 10 days, then it's over. But if rendition does, then all the rules of a procedure such as new trial otherwise apply. And I don't understand why you're asking us to make that distinction. If there's no rendition why wouldn't you still have the opportunity to file a motion for new trial under the rules?

HELMCAMP: Because that's the split that's occurring between the 4 CA's that have dealt with this issue of whether a motion for new trial can be granted or even considered. In McBeth, for example, the 14th CA said, No, the court applying the Cook v. Spears and Cook v. Walker holdings said the TC is powerless.

OWEN: But that gets back to the "or what." And help me here because I don't have the statutes in front of me. In some cases where the legislature has said, yes you've got a definite tine period, such as the family code, you've got to hear it _____ termination proceedings with 1-year. And doesn't it also say, or dismiss them?

HELMCAMP: I believe that is correct. And certainly I can concede, and I wish the legislature had been a little bit clearer in its wording of this statute. The only thing I can tell this court is since 1937, this is the statute we've had virtually unchanged except in 1981, as I mentioned, when they deleted the provision for reasons not apparent on the record that these cases shall be advanced above all others. The rest of the test, what we would like to see and the considerations is when the TC renders judgment on or before the 10th day, yes the rest of the rule as applicable to ordinary civil trials apply, because that gives meaning and effect to the entire statutory provision.

The commission's order is not however stayed. The judgment of the court, let's say as in this case, the TC having heard it decides no, the commission's order is supported by substantial evidence and therefore I am going to affirm it. That means the club has to shut down. It can still file a motion for a new trial because the statute tells us all of the rules applicable to ordinary civil trials apply with the following exceptions which shall be construed literally. If you look further into one of those sections it also points out that the order decision, a ruling of the commission, may be suspended or modified by the court pending trial on the merits, that's that 10 day trial, but the final judgment of the DC may not be modified or suspended. So the legislature has also told us that normal procedures for supersedas on appeal and all of those kinds of things in the rule are not applicable. But the only way I can find to justify this statute and give meaning and effect to all of it and carry out the legislative intent, which is obviously to balance the protection of the public health, safety and welfare on the one hand with the need of a permitee to carry out a personal privilege is to suggest this test.

ENOCH: Referring to Fox v. Medina, that takes the position that as long as the judge orally states what the judgment will be within the 10 days, then at some point in the future the judge can _____. Now the appeal under the rules of that decision doesn't occur until the written order. The oral rendition is no effect in terms of the appellate rights of the parties. I would assume that after about 1 - 2 years if no judgment had been written, the TC could be mandamused to enter the judgment that was orally rendered. We could try the case within 10 days and the TC makes no oral rendition. What is the difference between, irrespective of what this statute says which doesn't say anything about judgment, the party where the judge refuses to give you a written order and a trial where the court has told you what the judgment will be orally, but refuses to give you a written order? What's the difference between those two people in terms of what happens in the process?

HELMCAMP: I think what happens is that there would have been under S&A Restaurant v. Leo, a rendition of judgment. There would have been a pronouncement in open court in the presence of the parties of the court's judgment. That's what the commission would then take. If we won the case, if the judge affirmed the commission's order, say cancelling or denying the renewal of the application, they don't have a permit, they are not in operation. If it was the other way, and the judge ruled in favor of the plaintiff, we would issue them the license and they are operating.

What the commission would have to do, depending again on the oral rendition of judgment, which is awaiting the ministerial act of the signing of the written order and the triggering of all the other appellate time tables, is we would have to file a petition for writ of mandamus to try and get the judge to give us a written order. We obviously can't tell you which way to rule - just rule.

ENOCH: Wouldn't the parties have the opportunity to bring a mandamus against the trial judge to give them a written judgment?

HELMCAMP: I say yes.

ENOCH: And so as between the parties, they are in exactly the same posture. They don't have a written judgment. They can't proceed. You're saying that the way this statute is written, the party that got the judge to say you lose has a different set of procedural rights. I mean they have a substantive difference between them. If they can just get the judge to say, you lose before 10 days are up, or you win before 10 days are up, then they've got this whole panoply of appellate rights to have this review. But if they don't get the judge to say you lose or you win before the 10 days, then they don't get any of the rights that another person would get but couldn't exercise until they got the judge to put it in writing.

HELMCAMP: That, I believe, is the intent of the legislature and the meaning and effect of the use of the term "tried" meaning in the past tense. The legislature didn't say hold a hearing or conduct a hearing. As you've taught us in Cook v. Spears and Cook v. Walker, failure to hold that hearing, failure to conduct the trial, which I respectfully suggest although the statute is in artful

includes not only the hearing itself but the rendition of judgment as we have defined that term. Failure to do that deprives the court of the ability to grant the relief sought.

O'NEILL: Do you agree that the open court's challenge has been preserved?

HELMCAMP: I did not participate in the TC proceeding in any way in this case. I only took it over after the appeal had been filed in the 8th court. It is my recollection and I believe the record bears this out, that those issues were not preserved. They were raised for the first time when I raised the argument in the CA questioning the jurisdiction. That's when the issue of open courts and all the rest came in to being as we grappled with that issue. And certainly it became apparent before this court when they raised that in the petition.

O'NEILL: Was it briefed in the CA?

HELMCAMP: I believe it was.

O'NEILL: What happens if the applicant reapplies?

HELMCAMP: The applicant has an absolute opportunity to reapply.

O'NEILL: And then what happens?

HELMCAMP: They have to give notice of that application to virtually everyone in the community. The City of Rosenberg who was the main protestor in the original license renewal would have the opportunity to come in and reprotest the application. There would be another administrative contested case hearing and it would be conducted before the county judge, because this was a beer and wine permit.

O'NEILL: Would the applicant be faced with the argument that this has been decided in res judicata and...

HELMCAMP: No. The issue would be based on the present situation, the county judge would look at what's called place or manner of operation. The city would have the opportunity to say, we believe that the place where they want to conduct their business would be detrimental to the public health, safety and welfare of all.

O'NEILL: Would they have to show changed circumstances?

HELMCAMP: Not really showing changed circumstances, and the prior decision is not res judicata that would bar them forever.

O'NEILL: Well maybe not legally but practically I guess is my question.

HELMCAMP: Practically, if the City of Rosenberg or any other protestant felt that either the manner in which they would operate their business based on their prior history or the place in which they would operate the permitted business reflecting on their prior history would be detrimental. The county judge is authorized to deny the new request. But they get a full fresh hearing and all those issues are decided.

O'NEILL: But likely they would have to show a change of circumstances.

HELMCAMP: They would probably have to show something that would justify the county judge in believing the place or manner in which they would currently operate would not be detrimental to the public health, safety or welfare of all.

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REBUTTAL

FOSTER: In our opinion, this statute is just unconstitutional and can't stand if you go by what Mr. Helmcamp argues and what y'all have questioned. Practically, they are not going to get a license by - this was renewal of a license. And it was contested. It was tried. Judge Elliott granted the appeal, sent it back, remanded it. They filed a mandamus and tried to stop it. It didn't. We went back and heard another hearing for a long time and appealed it to Judge Clover who denied the appeal and that's how it got to the court in El Paso. That's the way it got there.

Our position is, that tried and trial are a whole lot different in definition. That says that the trial will be held before the judge. Now I can live with in these cases and anybody can live with putting on the evidence in front of the judge because it's a statement of facts. It may be that big, but he's got it.

HECHT: You mean because there would be no additional evidence?

FOSTER: It's de novo by substantial evidence. So all we've got to do is introduce the statement of facts. That's no problem. That will get you there. But are you going to say in addition, okay judge, now you have to do - I don't care what your schedule is, I don't care anything, you've got to render - nothing says render in these statutes. Cook doesn't say that. Cook talks about a trial.

HANKINSON: The commission takes the position though that what really matters is the rendition of judgment. And holding the hearing within the 10 days and only holding the hearing accomplishes nothing in terms of what the intent of the legislature was behind the statute. What's your response to that argument?

FOSTER: My response is, I'm not sure that the legislature intended to put that burden upon a citizen who has a right to an appeal. They put 'tried' before a judge.

HANKINSON: What was the intent of the legislature when you look at the totality of this

statutory scheme in imposing a very short time period, whatever action is required by the TC on the TC?

FOSTER: Some ninety days passes before you get to that point and then...

HANKINSON: But what is the purpose as you see it of the legislature determining that there should be rather strict time requirements on a proceeding such as this?

FOSTER: I think the only _____ thing that's practical would be you put the evidence in within that 10 days.

HANKINSON: I understand that that's what you say. But what I'm trying to understand is from your perspective as you look at this statute, what do you think the legislature was trying to accomplish by requiring a very strict time period, however you interpret it to apply for this proceeding?

FOSTER: I believe that _____ evidence that knowing that it's not evidence, it's not going to be - it's already been tried, there's a statement of fact, that after you file an appeal, that you offer this evidence. I don't think they intended to say Judge, we don't care what you're doing.

HANKINSON: What's the point of having to put on the evidence within 10 days if you don't also have to have the decisions. What's accomplished by a 10 day period, a 10 day time restriction on putting on the evidence without requiring a decision?

FOSTER: If that's what they intended, I think it's unconstitutional because you can't do it.

HANKINSON: As I understand your position, you would have us interpret the statute so that tried in the statute means hold the hearing and put on the evidence within 10 days. That we would not interpret that time period to include the rendition of judgment. And my question to you is, what would be the purpose behind and what would be accomplished by requiring evidence to be put on within 10 days, but not requiring rendition of judgment during the 10 days if we were to agree with your interpretation?

FOSTER: I believe that that is it. That the judge has it there to do. He has the evidence. I don't believe they intended and I don't know that Cook or anything else says rendition. All the courts have held hey you can do the judgment.

OWEN: Don't you think that maybe it's to protect the person who has the license so the county judge can't sit on it indefinitely? We just recently held that you can't renew it for a period beyond the renewal period.

FOSTER: If he loses jurisdiction in 10 days, his license is gone. That's it.

OWEN: But assuming we were to hold that there is mandamus or he had a right of appeal, then it works to the benefit of the license holder.

FOSTER: Well if the judge rules, we can mandamus him or they can mandamus him. I think that's a remedy.