

STATE OF OHIO)
) ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

KENT SUTTON dba)
SUTTON SERVICE CENTER)

C.A. NO. 93CA005699

Appellant)

v.)

DONALD SCHREGARDUS,)
DIRECTOR OF ENVIRONMENTAL)
PROTECTION)

APPEAL FROM JUDGMENT
ENTERED BY THE
OHIO ENVIRONMENTAL
BOARD OF REVIEW
CASE NO. EBR472610

Appellee)

DECISION AND JOURNAL ENTRY

Dated: April 4, 1994

This cause was heard upon the record in the Ohio Environmental Board of Review. Each error assigned has been reviewed and the following disposition is made:

BAIRD, J. This cause was heard upon the appeal of Kent Sutton, dba Sutton Tire Center, from a finding by the Ohio Environmental Board of Review, which found that the Director of the Ohio Environmental Protection Agency ("the Director") acted lawfully and reasonably in assessing a \$250 penalty against Sutton. We affirm.

Sutton Tire Center is a facility licensed under Ohio Adm.Code 3745-26 to conduct inspections of automobiles in furtherance of Ohio's Automobile Inspection and Maintenance program ("the AIM program"), codified at R.C. 3704.14 et seq.

ENVIRONMENTAL PROTECTION AND UPHOLDING THE VIOLATION AGAINST THE APPELLANT IN THAT THIS STATUTORY ENFORCEMENT SCHEME VIOLATES BOTH THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE OF OHIO."

Appellant broadly asserts that the statutory scheme and appeals process deny him his right to due process and to the equal protection of laws. He argues that the proceedings are analogous to criminal proceedings, as he is in danger of losing his license to conduct the inspections. However, we note that there is nothing in the record to suggest that Appellant's license was in jeopardy of revocation, and the proceedings at issue are clearly not criminal in nature. Therefore, the relevant due process claim which can be gleaned from Appellant's brief is an allegation that he has been deprived of a property interest, in \$250, without due process of law.

Appellant argues that the adjudicatory process does not allow him to present any evidence until the first appeal to the EBR and that, at that stage, the burden of proof was upon Appellant to prove that he was not in violation of the relevant statutes. This is because the Director bases the statement of violation only upon the agent's initial report and without consideration of the alleged violator's position. Upon appeal to the EBR, the EBR is required to determine whether the action of the Director was lawful and reasonable, and the EBR cannot substitute its judgment for that of the Director. Appellant alleges that the EBR is, therefore, nothing more than a "rubber stamp" of the Director's determination and the EBR will never reverse the Director's findings, unless the appellant can prove that the Director's actions were unreasonable and unlawful.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the Ohio Environmental Board of Review to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to Appellant.

Exceptions.



WILLIAM R. BAIRD
FOR THE COURT

REECE, P.J.
QUILLIN, J.
CONCUR

APPEARANCES:

STEPHEN LIST, Attorney for Appellant, 42871 North Ridge Rd., Elyria, OH 44035.

DAVID G. COX, Attorney for Appellee, Environmental Enforcement Section, 30 East Broad St., 25th Floor, Columbus, OH 43266.



Attorney General
Lee Fisher

TO: JUDI TRAIL, DEPUTY CHIEF COUNSEL, PUBLIC PROTECTION
DIVISION

FROM: GARY COX, AAG, EES *D.B.C.*

DATE: APRIL 11, 1994

RE: COURT OF APPEALS DECISION IN SUTTON TIRE V. DIRECTOR

Please find attached the opinion from the Lorain County Court of Appeals which affirms the decision of the EBR that the imposition of a \$250 penalty for violating the AIM program was lawful and reasonable. The assignment of error presented was that the AIM enforcement program pursuant to O.R.C. Section 3704.17 denied due process and was unconstitutional. This argument was rejected by the court of appeals. Now, we have a decision in the State which affirms the constitutionality of O.R.C. Section 3704.17.