

A city ordinance requires a taxicab operator's license to operate a taxicab in the city. The ordinance states that the sole criteria for the issuance of such a license are driving ability and knowledge of the city's geography. Applicants are tested by the city for these qualifications with detailed questionnaires, written and oral examinations, and practical behind-the-wheel demonstrations.

The ordinance does not limit the number of licenses that may be issued. It does, however, allow any citizen to file an objection to the issuance of a particular license, but only on the ground that an applicant does not possess the required qualifications. City licensing officials are also authorized by the ordinance to determine, in their discretion, whether to hold an evidentiary hearing on an objection before issuing a license.

A woman applies for a taxicab operator's license and is found to be fully qualified after completing the usual licensing process. Her name is then posted as a prospective licensee, subject only to the objection process. A man who is already a licensed taxicab driver files an objection to the issuance of such a license to the woman solely on the ground that the grant of a license to her would impair the value of his existing license. He demands a hearing before a license is issued to the woman so that he may have an opportunity to prove his claim. City licensing officials refuse to hold such a hearing, and they issue a license to the woman.

The man petitions for review of this action by city officials in an appropriate court, alleging that the Constitution requires city licensing officials to grant his request for a hearing before issuing a license to the woman.

For whom should the court rule in this case?

- A. City officials, because the licensing ordinance does not give the man any property interest in being free of competition from additional licensees.
- B. City officials, because the man had the benefit of the licensing ordinance and, therefore, may not now question actions taken under it.
- C. The man, because the determination of whether to hold a hearing may not constitutionally be left to the discretion of the same officials whose action is being challenged.
- D. The man, because the due process clause of the Fourteenth Amendment requires all persons whose property may be adversely affected by governmental action to be given an opportunity for a hearing before such action occurs.

Explanation:

Due process rights

| Right | Applicability | Examples |
|-----------------|--|---|
| Life | Government deprives person of life | <ul style="list-style-type: none">• Execution |
| Liberty | Government significantly restrains person's physical freedom, exercise of fundamental rights, or freedom of choice | <ul style="list-style-type: none">• Incarceration• Commitment to mental institution• Loss of parental rights |
| Property | Government deprives benefit from person legally entitled to receive it | <ul style="list-style-type: none">• Suspension from public school• Termination of welfare benefits• Loss of public employment (not at will) |

Procedural due process gives persons the right to **notice and a hearing** when the government **intentionally deprives** them of a life, liberty, or property interest. Persons have a **property interest** in any benefit that they are legally entitled to receive—eg, specific benefits associated with a **business or professional license**. But a unilateral expectation of, or desire for, a benefit does not amount to a property interest.

Here, the ordinance gives any citizen the right to object to the issuance of a license. And the man's license gives him the benefit of operating a taxicab in the city. But neither gives him a property interest in being free of competition from additional licensees (eg, the woman). Nor does his desire for that benefit create a protected interest. Therefore, the court should rule for the city officials and find that they were not required to grant a hearing.

(Choice B) The licensing ordinance gave the man the benefit of a taxicab license. But that does not preclude him from challenging actions taken under it. Instead, he can challenge an attempt to deprive him of *his* license (not the woman's) on due process grounds or file an objection to the issuance of a particular license (like any other citizen).

(Choice C) Had the man possessed a property interest, the determination of whether to hold a hearing *could have* been left to the discretion of the same officials whose action is being challenged. But those officials would have had to use the *Mathews v. Eldridge* balancing test when determining what process was due.

(Choice D) Due process often requires an opportunity for a hearing when a government action *deprives* a person of his/her property interest. However, a government action that merely has an *adverse effect* on such an interest is not sufficient to trigger due process safeguards.

Educational objective:

The Fourteenth Amendment due process clause requires notice and a hearing before the government deprives a person of a life, liberty, or property interest. A property interest includes benefits a person is legally entitled to receive—not merely expecting or desiring.

References

- Barry v. Barchi, 443 U.S. 55, 64 (1979) (holding that the plaintiff had a property interest in his state-issued horse trainer's license).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.