

State Liquor Authority Considers Revisions to the Statute

Proposed Changes Mostly Involve Licensing

BY KEVEN DANOW

In 2009, the Law Revision Commission issued a report with recommendations for amendments to New York’s Alcoholic Beverage Control Law. In the subsequent two years, under the direction of Chairman Dennis Rosen, Thomas Donohue, special counsel to the New York State Liquor Authority, has been diligently reviewing the recommendations of the Commission and drafting proposed changes to the statute.

On October 4th, industry members were invited to an open forum to discuss issues relating to the proposed statutory revision. Over 100 industry members attended. Representatives were present from major suppliers, wholesalers and retailers. The Authority used closed circuit internet television to allow participants to express their views from offices in Manhattan, Albany and Buffalo.

After a brief introduction, Chairman Rosen turned the meeting over to

Mr. Donohue, who acted as interlocutor, first setting forth each issue upon which the Authority sought comment and then supervising a lively discussion of the issues.

In deciding whether public convenience and advantage will be served if they grant an application for a new license, the Members of the Liquor Authority consider such things as how many package stores already are in place, how well the four nearest stores are doing, whether the population of in

the neighborhood is increasing or decreasing, what building is expected in the near future, and whether the proposed store will offer unique products or services. The Authority sought industry comment on whether the standards the Members apply should be codified.

Considering New Standards

Mr. Donohue asked the industry whether it believed the law should contain provisions which allow the Authority to condition license approval upon the applicant’s agreement to specific methods of operation and to withdraw conditional approval if between the date of approval and the date the license is to be issued, the Authority learns that the facts have changed or that the applicant has not been completely forthcoming.

Industry members discussed a statutory requirement for the appointment of an Alcoholic Beverage Control Officer



Members of the NYSLA: Paul Karamanol, senior attorney; Dennis Rosen, chairman; Keri O'Brien, head of licensing; and Thomas Donahue, special counsel



The recent SLA forum attracted not only a full house of industry representatives, but also an audience online

MEMBERS OF THE NYSLA CONSIDER A NUMBER OF VARIABLES WHEN DECIDING TO GRANT AN APPLICATION FOR A NEW LICENSE, INCLUDING HOW WELL THE FOUR NEAREST STORES ARE DOING AND THE POPULATION OF THE NEW NEIGHBORHOOD

and required training for licensees in the basic legal requirements and obligations of their license.

In addition, Mr. Donohue solicited comments on whether the number and types of licenses which are issued to wineries, breweries and distilleries could be reduced, with the license fees being determined by the amount of beverage alcohol produced.

Many other issues were discussed. Some enjoyed almost universal acceptance while others created a great deal of controversy. At the conclusion of the meeting, Mr. Rosen and Mr. Donohue thanked the participants and solicited additional written comments.

New Requirements or Advance Notice to Community Boards

Effective immediately, the legislature has amended some of the notification procedures relating to application for certain new licenses as well as applications for certain alterations and corporate changes. Where notification is required, it must be sent to the clerk of the village, town or city as the case may be, wherein the premises located. Notification need only be given to the clerk of the village, where the premises are located within the boundaries of a village. In New York City, service must be made upon the applicable community board. The notice must be sent by certified mail, return re-



ceipt requested or by overnight delivery service with proof of mailing or personal service upon the office of the clerk or community board, at least 30 days before the application is filed.

The notice requirement applies to new applications under sections:

- 55 (on premise-retail beer)
- 55-a (license to sell beer at baseball parks, race tracks and the like)
- 64 and 64-a (on premise liquor)
- 64-b (bottle clubs)
- 64-c (restaurant brew pub)
- 64-d (cabaret)
- 81 and 81-a (on premise wine).

Except in the case of a bottle club license, if the premises are located in New York City, the applicant must also

send to the applicable community board a notice 30 days before filing of an application in connection with one of the listed licenses:

- To renew the license
- To make a major alteration to the premise
- For approval of a substantial corporate change

A substantial corporate change is defined as a change of 80 percent or more of the officers or directors or a transfer of 80 percent or more of the stock, or an existing stockholder obtaining 80 percent or more of the stock. Similar rules apply to limited liability companies.

While 80 percent may seem like a high threshold, one should keep in mind that many corporations have only two or three shareholders and many limited liability companies have only one managing member. In some cases a change of only one person will meet the 80 percent threshold.

More on Corporate Changes

Two other points are worth noting. First, there is a \$128 fee to make a corporate change application.

Second, the new statute provides:

Notwithstanding any corporate change approved by the authority, a licensed corporation or limited liability company shall be bound by the representations set forth in the original application and any amendments thereto approved by the authority.

Members of the Liquor Authority have expressed concerns about licensees who change their methods of operation after the license is approved. The addition of this section may become a new weapon in the Authority's arsenal to attack licensees who try to do a method of operation bait and switch. ■

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