

STATE OF NEW YORK: LIQUOR AUTHORITY

Definition of "Occupied" within
the meaning of the 200 Foot Law

DECLARATORY
RULING
2011-03141A

Various provisions of the Alcoholic Beverage Control Law prohibit the Authority from issuing an on-premises liquor license, or a package or wine store license, to any premises which is on the same street and within two hundred feet of a "building occupied exclusively as" a school or place of worship. This licensing restriction is commonly referred to as the "200 Foot Law". Robert V. Ferrari, Esq. on behalf of a property owner ("client"), seeks a declaratory ruling as to when, for purposes of the 200 Foot Law, a building becomes "occupied" by a school or place of worship.

As set forth in Mr. Ferrari's request, the client owns a building located at 506-534 West 26th Street in Manhattan. The property is located between 10th and 11th Avenues. The client wishes to lease a portion of the building to an entity that would operate a restaurant holding an on-premises liquor license. At the corner of West 26th Street and 10th Avenue, a building is being renovated for use as a charter school. The fact that the site will be used as a school, and that the classes will commence in September 2012 is widely known. In fact, Mr. Ferrari submitted a copy of a lengthy New York Times article from July, 2010 regarding the school.

For purposes of this declaratory ruling, Mr. Ferrari's client does not dispute that the charter school would be within 200 feet of the proposed restaurant and would also be in a building exclusively occupied by the school. However, Mr. Ferrari argues that, since students have not yet started attending classes, the building is not currently being occupied as a school. Alternatively, he argues that the building would not be occupied as a school until a Certificate of Occupancy has been issued and staff regularly inhabits the facility. In addition, Mr. Ferrari takes the position that, as long as an application for a license is filed before the first day of classes, it would not be relevant whether the building becomes "occupied" by the school before the license is actually issued.

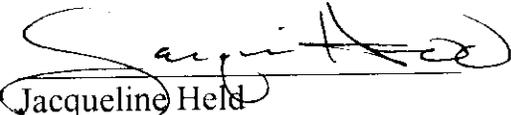
The 200 Foot Law provides no discretion to the Authority. The law expresses a public policy in place for over 75 years that establishments serving

liquor should not be in proximity to schools and places of worship. If a proposed licensed establishment is subject to the restriction, the Authority cannot issue a license. Even if the school or place of worship consents to the issuance of the license, the Authority cannot approve the application. *Multi Million Miles Corp v. State Liquor Authority*, 55 AD2d 866 (2nd Dept., 1977) aff'd 43 NY2d 774. If the Authority discovers that a location has been licensed in violation of the 200 Foot Law, it cannot allow the violation to continue by renewing the license. *Norton v. O'Connell*, 282 AD 744 (2nd Dept., 1953). The only exceptions to this general prohibition are contained within the law itself.

In light of the fact that the Authority has no discretion with respect to the 200 Foot Law, the Members of the Authority decline to provide a definition of "occupied" that would apply to every situation. Nor will the Members identify the date, whether it is the filing of the application; the issuance of the license; or some other point in time; that must be used in deciding if a school or place of worship is occupying a building.

Instead, it is the opinion of the Members of the Authority that such applications should be considered on a case by case basis. Turning to Mr. Ferrari's client, it is not disputed that a charter school intends to start classes at the location in the fall of 2012. It is also not disputed that the plan to open the school is common knowledge among those in the community. No application has been filed, nor is there even a potential applicant who has been identified. Given these facts, as well as the lack of discretion afforded to the Authority and the underlying policy of the 200 Foot Law, it is the determination of the Members of the Authority that the location owned by Mr. Ferrari's client is subject to the 200 Foot Law and no retail license to sell liquor on the premises, nor any package or wine store license, can be issued for that location.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on October 19, 2011.


Jacqueline Held
Secretary to the Authority