

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property
Located at 136 West 31st Street, Manhattan

DECLARATORY
RULING
2012-00551E

Various statutes¹ in the Alcoholic Beverage Control Law prohibit the Authority from issuing a retail license for the sale and/or consumption of liquor for 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”. The Alcoholic Beverage Control Law sets forth the procedures to be used in measuring the distance to the proposed licensed premises.² In addition, guidance is provided in determining whether a building is occupied exclusively by the school or place of worship.

The Members of the Authority are in receipt of a request from Terrence Flynn Jr. Esq., on behalf of a prospective applicant for a declaratory ruling as to whether, under the facts presented, a location is subject to the 200 Foot Law. For purposes of the request, Mr. Flynn does not dispute that the location is on the same street and within two hundred feet of a building occupied exclusively as a church. Instead, he seeks a ruling as to whether the location may be licensed as a result of the “grandfather” provision of the 200 Foot Law.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. Of relevance to this ruling is what is commonly referred to as the “grandfather” exception. In fact the “grandfather” exception is two separate provisions that allow a location to be licensed, or continue to be licensed, based on when the location was first licensed.

The first provides that a license that was in effect on December 5, 1933, may continue to be renewed even if the location is subject to the 200 Foot Law. The second exception states that “no license shall be denied [as a result of the 200 Foot Law] to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school [or place of

¹ See Alcoholic Beverage Control Law §§64(7)(a), 64-a(7)(a)(ii), 64-b(5)(a)(i), 64-c(11)(a)(i), 64-d(8)(a) & 105(3)(a).

² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

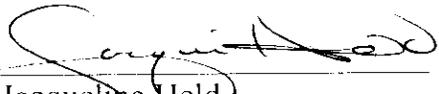
worship].³ Put another way, if there was a license issued for the location before the school or place of worship came into existence, and a license has remained in effect at the location since that time, the 200 Foot Law does not apply.

The facts upon which this ruling is based are as follows.

- The proposed licensed premises is at 136 West 31st Street in Manhattan.
- The Church of Saint Francis of Assisi is located at 135 West 31st in Manhattan. The church appears to be across the street from the proposed licensed premises.
- The church has been at this location for well over one hundred years.
- The most recent licensee at the location was Il Campanello Ristorante, Inc. According to the Authority's files, that license was issued in or about 1995. The license expired on September 30, 2011.
- The records for any licenses issued prior to 1995 are not available to the Authority.

There is no evidence that the license issued to Il Campanello Ristorante, Inc., or any prior licensees, was issued in error or based on misrepresentations of fact regarding the presence of the Church. Therefore, the Members of the Authority will presume that a prior determination was made that the location was subject to one of the "grandfather" exceptions to the 200 Foot Law. The only question remaining is whether the location has been continuously licensed. The Members of the Authority find that, notwithstanding the expiration of the most recent license on September 30, 2011, the location will be deemed to be continuously licensed upon the timely filing of an application by Mr. Flynn's client.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on February 15, 2012.


Jacqueline Held
Secretary to the Authority

³ See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).