

STATE OF NEW YORK: LIQUOR AUTHORITY

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Ability of a local municipality to restrict the hours of sale of alcoholic beverages within such municipality

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DECLARATORY  
RULING  
2012-01381B

The Alcoholic Beverage Control Law ("ABCL") contains several provisions governing the hours during which alcoholic beverages can be sold at retail throughout the state. ABCL §106(5) states that no alcoholic beverages may be sold for consumption on a licensed premises between 4 a.m. and 8 a.m. On Sundays, the prohibition on such sales lasts from 4 a.m. until noon. ABCL §105(14) imposes closing hours on stores that sell liquor and wine for off-premises consumption. Except for Sundays and Christmas, these licensees may be open from 8 a.m. until midnight. On Sundays they may not open until noon and must close by 9 p.m. These businesses may not be open on Christmas. The sale of beer for off-premises consumption is addressed in ABCL §105-a, which allows for those sales at any time except between 3 a.m. and 8 a.m. on Sundays.

Notwithstanding the provisions of the above-referenced statutes, the ABCL includes a mechanism for the hours of sale to be further restricted. Subdivision 11 of section 17 allows the Authority, "[u]pon receipt of a resolution adopted by a board of supervisors or a county legislative body requesting further restriction of the hours of sale of alcoholic beverages within such county, and upon notice and hearing within such county, to approve or disapprove such hours within such county."

By letter dated April 27, 2012, Christian Mathiesen, the Public Safety Commissioner of the City of Saratoga Springs, seeks a declaratory ruling with respect to the following question: *May a city establish its own hours of sale of alcoholic beverages, either through its own local legislature, its county legislature, the state legislature, or a state authority, agency, or department?* In support of his request, Mr. Mathiesen notes that "the number of Saratoga Springs police reports concerning public intoxication and injuries to persons in the area of [licensed] establishments, particularly during late hours, has increased."

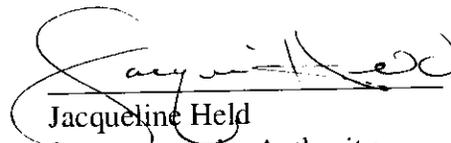
The question of whether the city itself could impose its own hours of sale appears well settled. Subdivision 1 of section 10 of the Municipal Home Rule Law allows local governments to adopt local laws provided that those laws are not inconsistent with the state constitution or any general law. In *People v. De Jesus*, 54 NY2d 465 (1981), the Court of Appeals held that the state, through the enactment of the ABCL, pre-empted the regulation of the sale of alcoholic beverages. As a result, "a local government is precluded from legislating on the same subject matter unless it has received 'clear and explicit' authority to the contrary". 54 NY2d at 469. The Court noted that, to find otherwise, would allow the municipality to render illegal what is specifically allowed by the state. 54 NY2d at 472.

The ABCL does afford cities and towns the power to prohibit the sale of alcoholic beverages at certain types of establishments. Article 9 of the ABCL, also known as the Local Option, also gives cities and towns the ability to impose a complete ban on the sale of alcoholic beverages in the municipality. However, as the Court of Appeals held in the *De Jesus* case, as well as in *Lansdown Entertainment Corporation v. New York City Department of Consumer Affairs et al.*, 74 NY2d 761 (1989), there is no authority in the law for a city to regulate the hours of sale for alcoholic beverages.

As recited above, ABCL §17(11) provides that a county legislative body may seek a restriction on the hours of sale "within such county". The Authority interprets "within such county" to mean "throughout the entire county". Given the specific references to "city" and "town" in the Local Option statutes, there is no evidence to suggest that the Legislature intended "within the county" to mean subdivisions of the county. This interpretation is supported by the history of §17(11). Subdivision 11 was enacted in 1995. Prior to that, many of the powers of the Authority were delegated, by statute, to local alcoholic beverage control boards. ABCL §43 gave each board powers "with respect to the county... over which it has jurisdiction." Among those powers in §43 was the ability to further restrict the hours of retail sale of alcoholic beverages "with respect to the county".

Therefore, the Authority finds that it has no power under the ABCL to entertain a request from either a city or from the legislative body of the county in which the city is located, to restrict the hours of retail sale of alcoholic beverages within such city. Nor is there any power granted in the ABCL to any other state agency or department to entertain such a request.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on May 8, 2012.

  
Jacqueline Held  
Secretary to the Authority