

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of Alcoholic Beverage Control Law
with respect to on-premises liquor license
for a movie theater

DECLARATORY
RULING
2012-01938

Introduction

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the applicability of the Alcoholic Beverage Control Law (“ABCL”), or the Rules of the Authority, to any person, property or state of facts. Robert Skene, Esq, on behalf of AMC Entertainment, Inc. (“AMC”), seeks a declaratory ruling as to whether, under the facts presented, the business plan it intends to employ to operate a movie theater with an on premises liquor license would violate any provisions of the ABCL.

Statement of Facts

As described by Mr. Skene, his firm’s client is a privately held exhibitor with 338 theaters. Currently, 34 of its locations serve alcohol in other parts of the country and an additional 21 are either under construction or scheduled to begin construction. The business intends to begin modifying some of the current locations in New York State to sell alcoholic beverages for consumption on the premises. In order to do this, AMC would be completely remodeling its locations. The seating in each viewing theater would be reduced by approximately 40% to make more room for walkways, larger seats, cup holders and moving lap tables. Additionally, AMC will need to completely remodel the entrance space to accommodate the addition of a full kitchen and a bar, and would be implementing new operating procedures for the entire premises.

AMC’s precise business plan is an integral factor in the consideration of this request. AMC was present at the June 20th and July 25th, 2012 Full Board Meeting to discuss the method of operation and provide reassurances to the Members of the Authority that this would be a safe environment that served the community. AMC presented a detailed plan to serve food in a cafeteria style whereby a full kitchen

would be added to the premises and then operated by newly hired chefs. The menu submitted to the Authority includes a variety of food items including salads, sandwiches, paninis, hotdogs, pizza, various platters including chicken entrees, and desserts. A full service bar would also be added in the lobby area. The bar is the only place where patrons would be able to purchase alcoholic beverages.

The Members of the Authority have concerns with respect to allowing alcoholic beverages to be taken into a dark theater by the patrons. However, AMC noted that unlike most theaters, these theaters would be well supervised and each patron will only be allowed to purchase one drink at a time. Furthermore, unlike other theaters, AMC will be implementing a policy that prohibits persons under the age of 18 from entering the premises unless accompanied by an adult. Lastly, the provided business plan calls for a strict adherence to a “no tolerance” policy and its employees handling the alcoholic beverages will be attending multiple alcohol and service education classes.

Statutes Involved

Since 1934 § 64(5) of the ABCL has dictated the issuance of on-premises liquor licenses to restaurants, hotels, catering establishments, clubs, railroad cars, vessels or aircrafts, where those terms are defined in §3. In 1964 the ABCL was amended and §64-a was added which provided for a “special on-premises liquor license.”

Under §64-a(6), the “special license” provided for the issuance of liquor licenses to businesses whose principal business was either “(a) the sale of food or beverages at retail for consumption on the premises or (b) the operation of a legitimate theatre or such other lawful adult entertainment or recreational facility.” Furthermore, this section notes that it shall not allow the issuance of on-premises liquor licenses to a motion picture theater unless it meets the definition of “restaurant and meals, and where all seating is at tables where meals are served.” These terms are defined in §3 of the ABCL.

A “restaurant,” according to §3(27), is defined as a “place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected there with,” and “meals” are the “usual assortment of foods commonly ordered at various hours of the day.”

Issues to be Considered

In reviewing this proposal, there appear to be two issues raised concerning the ABCL:

(1) Whether the menu includes “meals” sufficient to constitute a restaurant under ABCL §3(27); and

(2) Whether the cafeteria style service and eating area is sufficient under ABCL §§ 64 – 64-a, and would subsequently meet the necessary definitions as defined in §3(27).

Determination of the Authority

With respect to the first issue, ABCL §3(27) provides that sandwiches or salads are not sufficient by themselves to constitute “meals.” While this proposed menu contains salads and sandwiches, it is not limited to those dishes and uses a full kitchen to prepare “platter” dishes, pizzas, hot dogs, and desserts. These items are very similar to most restaurant fare and would be served and commonly ordered throughout the day.

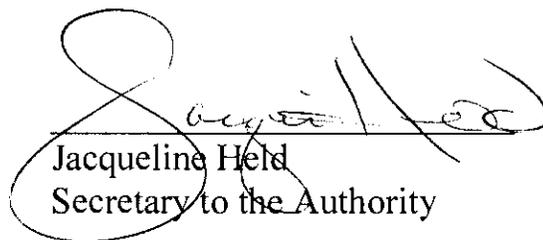
With respect to the second issue, ABCL §64-a requires a motion picture theatre to have all seating at tables where meals are served. Under the proposed business plans, the new seating would be equipped with a table attached to the chairs to give patrons a place to eat while still maintaining a safe environment in the dark and allowing the theater’s security to safely and easily navigate the theaters during a movie.

Even though AMC would be using a “cafeteria style” service system, the patrons will be served from a full service kitchen and there will be approximately 24 “food handlers” employed to ensure the appropriate level of service. Therefore, the Members of the Authority find that this business plan meets the ABCL definition of a restaurant with the requisite table seating.

In conclusion, the specific business plan proposed by AMC and submitted to the Authority does not violate the provisions of the ABCL and is eligible for an on-premises liquor license.

Licensees are reminded that this ruling is limited to the facts set forth herein. This ruling should not be considered approval of any other proposal which deviates, in any respect, from the representations set forth above.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on July 25, 2012.



Jacqueline Held
Secretary to the Authority