

STATE OF NEW YORK: LIQUOR AUTHORITY

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Dispensing Machine

DECLARATORY  
RULING  
2012-01941

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Section 106 of the Alcoholic Beverage Control Law sets forth certain restrictions governing the conduct of on-premises licensees. Subdivision 2 of that section prohibits on-premises licensees from: refilling liquor and wine bottles; premixing drinks containing liquor and wine; and allowing liquor and wine bottles to become contaminated with foreign substances. Essentially, the subdivision requires liquor and wine to be kept in the container delivered by the manufacturer or wholesaler until the beverage is served to the patron. Nothing else can be put into the container.

In 2000, subdivision 2 was amended. The existing prohibitions discussed above became part of paragraph "a" of subdivision 2. A new paragraph "b" was added that reads as follows:

Notwithstanding the provisions of paragraph (a) of this subdivision, a retail licensee for on-premises consumption may prepare and keep drinks containing alcoholic beverages in dispensing machines, having capacities of not less than a gallon, which continually mix such drinks.

As set forth in the sponsor's memo for the 2000 amendment to subdivision 2, the purpose of adding paragraph "b" was to permit on-premises licensees "to prepare and store drinks containing alcoholic beverages in dispensing machines which continually mix the drinks." In support of the proposal, the sponsor noted that the intent behind subdivision 2 (contained in the original 1934 Alcoholic Beverage Control Law) was to address the public's concern that on-premises licensees might deceive consumers by serving lesser quality drinks than ordered. However, advances in technology have resulted in specialized dispensing machines which allow for the preparation and service of uniform quality frozen drinks.

The Authority is in receipt of a request from Robert Bookman, Esq. with respect to whether a particular device meets the requirements of paragraph "b". As

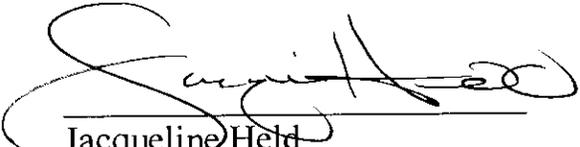
set forth in Mr. Bookman's July 10, 2012 letter the device, known as a "Magnetic Stirrer", uses "magnetism" to keep liquids mixed and in constant motion. He has provided a description of the device from the manufacturer.

As explained by Mr. Bookman, a licensee would combine liquor and/or wine with other beverages in a keg-like container to create "mixed drinks". Much like draft beer, the container would be connected to tap at the bar. This system would eliminate the need for the licensee to prepare each individual "mixed drink" as it is ordered by the patron.

Mr. Bookman provided the Members of the Authority with a demonstration of the device. A small object is placed in the container containing the beverage. The container is then placed on the device. Once operating, a magnetic field is created between the object and the device, resulting in a "whirlpool" effect in the container. Bases upon the presentation, the device does appear to continuously mix the beverage contained in the container.

According, the Members of the Authority find that this device, used in combination with a container (no less than one gallon in size) meets the requirements of paragraph b of subdivision 2 of section 106 of the Alcoholic Beverage Control Law. Licensees are reminded, however, that the containers must not be "pre-mixed" and stored for any length of time prior to being placed on the device.

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