STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property located at 491 Hempstead Turnpike in Elmont

DECLARATORY RULING 2013-01030

Various statutes[1] 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 from the proposed licensed premises. 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 John Springer, 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. The facts upon which this ruling is based are as follows.

- The proposed licensed establishment is located at 491 Hempstead Turnpike in Elmont.
- There was an on-premises liquor license in place at 491 Hempstead Turnpike from at least 1992 until October 2012.
- The Bethel International Church is located at 1851 Hempstead Turnpike. The church is on the same block as the proposed licensed establishment. As measured under the 200 Foot Law, the church is 82 feet from the proposed licensed premises.
- The building in which the Bethel International Church also houses a commercial enterprise, Elmont Window Fashions, that has been doing business at the location since 1999.

As noted above, the 200 Foot Law refers to buildings that are "occupied exclusively" as a school, church, synagogue, or other place of worship. On June 10, 1952, the Authority issued Divisional Order 319, which recited a policy adopted by the Members of the Authority on May 13, 1952, with respect to the agency's interpretation of the 200 Foot Law. As set forth in the Divisional Order, the policy stated that, in all cases involving the application of the 200 Foot Law:

[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).

> ...the discretion of the Authority shall be exercised in such a manner as to give the fullest scope of protection of the law to such educational institutions, churches and other places of worship, and that every reasonable doubt be resolved in favor of the religious or educational institution involved.
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> In the exercise of its discretion under the law, the requirement that the building be "occupied exclusively" as a school, church, synagogue or other place of worship shall be interpreted to afford the fullest protection of the law to those institutions in which activities of a non-educational or religious nature are present so long as those activities bear a logical relationship to the educational or religious purpose of the institution, and are fairly to be considered subsidiary to its main purpose.

While the statutes use the phrase "building occupied exclusively" as a school or place of worship, the courts have adopted a test that looks to whether the building is used primarily as a school or place of worship. The building will still be considered a school or place of worship within the meaning of the 200 Foot Law as long as any use is incidental to, and not inconsistent with or detracting from the predominant character of the building as a school or place of worship. *Fayez v. State Liquor Authority*, 66 NY2d 978 (1985).

Applying that standard, the Second Department held that a building was still "occupied exclusively" as a place of worship when guest quarters were used by visiting church members and there was an apartment for the church's pastor. *AJ & J Restaurant Corp. v. State Liquor Authority*, 205 AD2d 530 (1994). The First Department found that the use of the fifth floor of a location five nights a week (rent-free) by a chapter of Alcoholics Anonymous was not inconsistent with the building being "occupied exclusively" as a church. *Multi Millions Miles Corp. v. State Liquor Authority*, 55 AD2d 866 (1977) aff'd 43 NY2d 774. The Fourth Department came to a similar conclusion with respect to a place of worship where bridal showers and birthday parties were conducted. *Capizzi v. State Liquor Authority*, 231 AD2d 881 (1996).

In contrast, the First Department held that a church that is renting out its auditorium for baseball card shows, jewelry shows, oriental rug sales as well as renting out another portion of the building as an embassy was not "occupied exclusively" as a place of worship. *Brasero v. State Liquor Authority*, 176 AD2d 462 (1st Dept., 1991). The Second Department found that the use of the building on a regular basis for a number of nonreligious activities that the church had no control over, including a commercial theatre group, private teaching program and concerts, did not meet the "occupied exclusively" standard. *Le Parc Gourmet Inc. v. State Liquor Authority*, 95 AD2d 855 (1983). The Third Department made the same determination with respect to a church that rented out a wing of its building on a yearly basis to a rehabilitation program. *Taft v. State Liquor Authority*, 84 AD2d 623 (3rd Dept., 1981).

In order to give guidance as to what types of activities could be conducted at a school or place or worship, and still have the building be considered to be "occupied exclusively" as such, the statutes containing the 200 Foot Law were amended in 2007 to state that

... a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

Based upon the facts presented and the relevant law, as recited above, the Members of the Authority find that the presence of the commercial enterprise at 1851 Hempstead Turnpike renders the location a building not exclusively occupied as a place of worship. Accordingly, the proposed licensed premises is not subject to the 200 Foot Law.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on April 24, 2013.

Jacqueline Held
Secretary to the Authority