

STATE OF NEW YORK: LIQUOR AUTHORITY

Local Wine education classes

DECLARATORY
RULING
2013-02525

Preliminary Statement

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 application of the Alcoholic Beverage Control Law, or the Rules of the Authority, on any person, property or state of facts.

By letter dated August 16, 2013, a request was submitted by Chris Powell, owner and manager of Local Wine School Franchises Ltd.(Local Wine), a British company that provides wine education classes. Local Wine does not hold any licenses relating to alcoholic beverages. The classes that Local Wine conducts for a fee require the consumption of wine. In anticipation of opening Local Wine School franchises in New York City, Mr. Powell requests a declaratory ruling as to whether Local Wine School may conduct wine education classes at licensed on-premises locations in New York.

Statement of Facts

Local Wine does not hold any license to traffic in alcoholic beverages. Local Wine wishes to conduct wine education classes at licensed on-premises locations in New York City. Reservations and advertisement for classes would all be done on a Local Wine website.

Wine to be served at all classes would be purchased and served by the on-premises licensee at prices set by the on-premises licensee. Local Wine may, as all on-premises customers may, request specific wines for the retailer to purchase.

Class participants would pay the on-premises licensee for the wine served at the class and then pay Local Wine for the education and materials provided.

Applicable Law

ABCL §111 prohibits a licensee from making their license available to anyone. ABCL §100.1 provides that only those with an appropriate license may sell alcoholic beverages within the State.

Issues to be considered

Is Local Wine engaging in decisions and sales that are required to be made by the on-premises licensee? In short, would Local Wine be “availing” the on-premises licensee?

Determination of the Authority

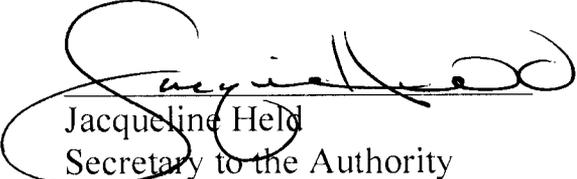
When determining if a retail licensee has made their license available to another, the Members generally examine the role of the licensee in the operation of the premises. The Members generally ask whether the licensee is playing a passive role and if an unlicensed person is acting in their place.

Under the facts presented by Local Wine, an on-premises licensee would retain all control of the premises while hosting a Local Wine education class. The licensee buys the wine, chooses the selling price of the wine, serves the wine and is directly paid for the wine. Although Local Wine may suggest or request specific wines be purchased for the class, a licensee is not obligated to honor such request and retains control of their product selection. Accordingly, there is no argument that a licensee has made their licensee available to Local Wine.

In conclusion, the proposal of Local Wine as described by Mr. Powell does not violate the ABCL §111. Licensees are reminded that this ruling is limited to the facts set forth herein. This ruling should not be considered approval for any

other proposal which deviates in any respect from the representations set forth above.

The forgoing Declaratory Ruling was approved by the Members of the Authority at Full Board meeting held on September 25, 2013.



Jacqueline Held
Secretary to the Authority