

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of RiverWorks

DECLARATORY  
RULING  
2014-00421B

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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 January 14, 2014, a request was submitted by Noreen Healey, Esq. on behalf of her client RiverWorks LLC. RiverWorks is a development corporation overseeing the construction of the Buffalo River Works entertainment complex and recreation center (“the Center”). The complex is part of a waterfront re-development plan approved by the City of Buffalo, intended to re-gentrify an underutilized industrial zone. RiverWorks will have an indoor arena and recreational center on the property, including two ice and sporting rinks. The indoor arena will host, among other activities, a wide variety of cultural events, and the outdoor area will host, among other types of events, soccer, hockey and lacrosse competitions and tournaments for semi-professional sports teams from New York, surrounding states, and Ontario, Canada. RiverWorks will operate the Center, which will have a capacity far exceeding 1,000 persons, and apply for liquor licenses for concession stands and restaurants at the site.

Ms. Healey asks whether, under the facts presented, the assignment of the right to sell all sponsorship and advertising rights of the Center would violate the “tied-house” or “gifts and services” prohibitions in the Alcoholic Beverage Control Law (“ABCL”).

Proposed Assignment Agreement

River Works seeks to enter into an assignment contract with Buffalo River Marketing LLC (“BRM”). The contract will assign BRM the right to sell all advertising for the Center and enter into sponsorship agreements for the Center.

BRM's owner and sole principal is Maryann Stein. Ms. Healey states that neither BRM, nor Ms. Stein holds any interest in RiverWorks or Ganson Entertainment LLC., the landlord for the Center. Ms. Healey also states that neither Ms. Stein nor BRM hold any state or federal licenses in relation to alcoholic beverages. Nor do they hold any interests in the manufacturing or sale of alcoholic beverages.

The assignment agreement would permit BRM to pay RiverWorks a flat fee for the ability to sell all advertising and sponsorship rights to the Center. BRM would have complete control over advertising and sponsorship agreements and retain all the revenue. However, RiverWorks would retain quality control authority and may disapprove any ad or sponsorship containing indecent or offensive content. The fee paid by BRM to RiverWorks would be a fixed amount and not contingent on the sponsorship revenue.

#### Determination by the Authority

The purpose of the "tied-house" and "gifts & services" law is to prevent suppliers of alcoholic beverages from having an interest in, or undue influence over retailers. The laws aim to prevent certain practices such as suppliers paying retailers to advertise their product at the licensed premises. This practice is impermissible because it may "tie" a retailer to a supplier by the advertising revenue and it may also unduly influence the purchasing of the retailer. However, with those guiding principles, the Members have held that certain licensed premises may assign sponsorship or advertising rights to their premises to an unlicensed third party and hence contain advertisements or sponsorship from suppliers.

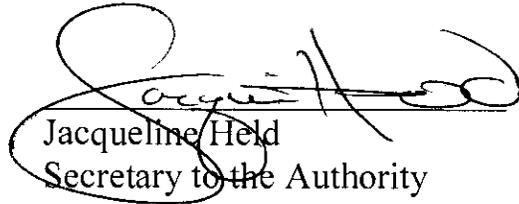
In requests concerning, Yankee Stadium (2009-00615), Bethel Woods Performing Arts Center (2011-001646C) and the Barclay's Center (2012-00957D) the Members permitted these licensed venues to assign their sponsorship and advertising rights to unlicensed third parties. On each occasion the assignment was for a flat fee not contingent upon sales. The third party was unlicensed and held no interest in any tier. The third party exercised total control over the sponsorship and advertising agreements while the licensee retained a simple quality control right as to ensure that no advertisements were offensive. Most significantly, each of the above named licensees is a large public sports or a performing arts venues or both.

The Members find that large public sports and performing arts venues serve a unique role in society and have traditionally included advertisements from

suppliers of alcoholic beverages. The Members find that advertisements by suppliers at these venues are intended to support sports teams and/or the arts and are not intended to “tie” the venues in the same manner that advertisement may in typical on premises venues. This unique aspect of public sports and performing arts venues, coupled with the use of a third party which retains decision-making control over the ads and receives the revenue, leads the Members to find that sponsorship agreements for large public sports and performing arts venues do not violate the “tied-house” or “gifts and services” provisions of the ABCL. Accordingly, the Members find that the proposed method of operation and agreement between RiverWorks and BRM does not violate the ABCL.

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, with the representations as set forth above.

The forgoing Declaratory Ruling was approved by the Members of the Authority at Full Board meeting held on February 11, 2014.



Jacqueline Held  
Secretary to the Authority