

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of the 200 Foot Law on property located  
at 67 First Avenue in Manhattan

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DECLARATORY  
RULING  
2014-02969

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 (ABCL), or the Rules of the Authority, on any person, property or state of facts.

Highseyko Corporation ("Highseyko") currently holds an on-premises wine and beer license for a restaurant located at 67 First Avenue in Manhattan. Such licenses are governed by section 81 of the Alcoholic Beverage Control Law ("ABCL"). Highseyko seeks to pursue an on-premises liquor license for its establishment. On-premises liquor licenses for restaurants are governed by ABCL section 64. That section, as well as the other sections governing on-premises liquor licenses, contains a provision prohibiting the issuance of such a license for any premises which is on the same street and within 200 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. Highseyko has submitted a request for a declaratory ruling to determine whether the "200 Foot Law" would prohibit it from obtaining an on-premises liquor license at that location.

As explained in the request for the declaratory ruling, there is a public school located on East 4<sup>th</sup> Street between First Avenue and Second Avenue. Highseyko's restaurant is situated at the corner of First Avenue and East 4<sup>th</sup> Street. A diagram has been submitted with the memo showing the relative locations of both Highseyko's establishment and the school. Highseyko does not dispute the fact that the building housing the school is occupied exclusively as a school. Nor does Highseyko dispute that, using the measurement system provided for by the 200 Foot Law, the school is within 200 feet of the restaurant. The issue raised by Highseyko is whether the restaurant is "on the same street" as the school.

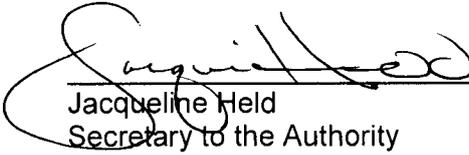
Highseyko acknowledges that, for purposes of the 200 Foot Law, a licensed premises on the corner of two streets is located on both streets. It does not matter whether there are any entrances to the building on both streets. [See *Gorman's Restaurant v. O'Connell*, 299 NY 733 (1949)]. Instead, Highseyko argues that the restaurant is not on the corner of First Avenue and East 4<sup>th</sup> Street. As explained in its request for this ruling and depicted on a diagram and in photographs submitted with the request, Highseyko notes that there is a "kiosk" attached to the East 4<sup>th</sup> Street wall of the restaurant. This structure, according to Highseyko, is a "take-out" establishment serving breakfast and lunch. Highseyko argues that this kiosk, and not the restaurant, occupies the corner of East 4<sup>th</sup> Street and First Avenue.

There is a flaw in Highseyko's argument. The diagrams and photographs clearly show that the kiosk is not at the corner. The kiosk is several feet from the point where the sidewalks of the two streets meet. A corner of the restaurant, including windows and the entrance, is at that point. Highseyko notes that the kiosk and the restaurant share the same address. That fact does not alter what can clearly be seen in the diagram and photographs- the restaurant, and not

the kiosk, is at the corner of East 4<sup>th</sup> Street and First Avenue. Highseyko notes that it has obtained the community's support for the liquor license and that it has a good disciplinary record with the Authority. However, the statute does not allow us to grant an exemption to the 200 Foot Law based on those factors.

Accordingly, we hold that, under these facts, the 200 Foot Law prohibits the issuance of an on-premises liquor license to Highseyko's restaurant.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on December 2, 2014.



Jacqueline Held  
Secretary to the Authority