

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on property
Located at 85 Washington Place, Manhattan

DECLARATORY
RULING
2012-00551D

Various statutes¹ 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 to the proposed licensed premises.² 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 Matthew Leone, Esq., 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. For purposes of the request, Mr. Leone does not dispute that the location is on the same street and within two hundred feet of a building occupied exclusively as a church. Instead, he seeks a ruling as to whether the location may be licensed as a result of the "grandfather" provision of the 200 Foot Law.

Notwithstanding the general prohibition created by the 200 Foot Law, there are certain statutory exceptions that allow a retail liquor license to be issued. Of relevance to this ruling is what is commonly referred to as the "grandfather" exception. In fact the "grandfather" exception is two separate provisions that allow a location to be licensed, or continue to be licensed, based on when the location was first licensed.

The first provides that a license that was in effect on December 5, 1933, may continue to be renewed even if the location is subject to the 200 Foot Law. The second exception states that "no license shall be denied [as a result of the 200 Foot Law] to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school [or place of worship]."³ Put another way, if there was a license issued for the location before the

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).

² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

³ See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

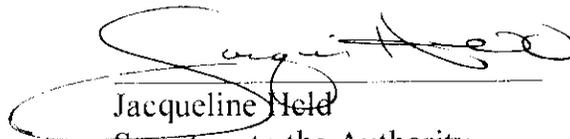
school or place of worship came into existence, and a license has remained in effect at the location since that time, the 200 Foot Law does not apply.

The facts upon which this ruling is based are as follows.

- The proposed licensed premises is at 85 Washington Place in Manhattan.
- As set forth in Mr. Leone's letter of February 2, 2012, the location in question has been licensed to various entities as a restaurant, bar or cabaret since 1935.⁴
- The location was most recently licensed to Washington Place Crow, Inc. It appears from the records available that this license was issued in or about 1995. The license was surrendered in March 2011.
- At the corner of Washington Place and 6th Avenue is St. Joseph's Church. The entrance to the church is on 6th Avenue. It is one of the oldest churches in the City of New York.

There is no evidence that the license issued to Washington Place Crow, Inc. or any prior licensee was issued in error or based on misrepresentations of fact regarding the presence of the Church. It appears more likely that this location was licensed before case law developed regarding the application of the 200 Foot Law on corner locations⁵. Therefore, the Members of the Authority will presume that this location was properly licensed in the past. The only question remaining is whether, by virtue of the surrender of the most recent license in March 2011, the location has been continuously licensed. The Members of the Authority find that, notwithstanding the surrender of the license, the location will be deemed to be continuously licensed upon the timely filing of an application by Mr. Leone's client.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on February 15, 2012.


Jacqueline Held
Secretary to the Authority

⁴ Since the Authority did not retain its records of licenses that expired prior to the creation of its electronic data base, this writer cannot confirm, nor deny, Mr. Leone's claim. However, Mr. Leone has supplied documentation to show that the location has been used as a licensed premises for the last seventy-five years.

⁵ In *Gorman's Restaurant, Inc. v. O'Connell*, 299 NY 733 (1949), the Court of Appeals upheld the Authority's interpretation that a building at a corner location was, for purposes of the "same street" language of the 200 Foot Law, on both streets regardless of whether there are entrances on both street.