

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law to property
Located at 11 Newel Street, Brooklyn

DECLARATORY
RULING
2012-00817A

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 between 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 Charles B. Linn, 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. Linn does not dispute that the location is on the same street and within two hundred feet of a building occupied as a school. 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].”² 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).

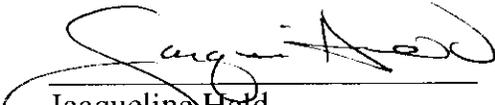
school or place of worship came into existence, and a license has remained in effect at the location since that time, the 200 Foot Law does not apply.

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

- The proposed licensed establishment is at 11 Newell Street in Brooklyn.
- According to the Authority's records, The Continental Restaurant, Inc., held an on-premises liquor license at the location from 1994 until December 27, 2011, when the license certificate was surrendered. There are no other records available regarding the licensing of the location. It is not known whether the above-referenced licensee disclosed the presence of the school in its application. Mr. Linn claims that the location has been licensed since at least the 1980's.
- Stanislaus Kostka Catholic Academy is directly across the road at 12 Newell Street. According to its website, the school has been at its current location since 1929.

There is no evidence that the license issued to The Continental Restaurant, Inc. or any prior licensee was issued in error or based on misrepresentations of fact regarding the presence of the Church. 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 December 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. Linn's client.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on March 13, 2012.


Jacqueline Held
Secretary to the Authority