

STATE OF NEW YORK: LIQUOR AUTHORITY

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Application of 200 Foot Law to property  
located at 41 East 11<sup>th</sup> Street, Manhattan

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DECLARATORY  
RULING  
2013-00204

Various statutes<sup>1</sup> 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 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.” The Alcoholic Beverage Control Law (“ABCL”) sets forth the procedures to be used in measuring the distance between the proposed licensed premises.<sup>2</sup> In addition, guidance is provided in determining whether a building is occupied exclusively by the school or place of worship. The 200 Foot Law also allows for the continued licensing of locations if a school or place of worship subsequently locates within 200 feet of the premises.

The Authority is in receipt of a request from Joseph R. Levey, Esq., on behalf of his client, Analogue LLC, for a declaratory ruling as to whether a location being considered by his client for an on-premises liquor license is subject to the “200 Foot Law.” As noted in his request, his client does not want to enter into a lease for the property unless the site is eligible for such a license.

Mr. Levey does not dispute that his client’s proposed location is within 200 feet of, and on the same street as, a facility called the Bahá’i Center (the “Center”). Mr. Levy also does not dispute that the Center is a place of worship for the Spiritual Assembly of the Bahá’i of the City of New York. However, he also states that the Center is used for other purposes. Given those other uses, Mr. Levey argues that the Center is not a building “occupied exclusively” as a place of worship.

Based on the record, there are four activities conducted at the Center that, as Mr. Levy frames the issue, call into question the “exclusivity” of the building. First, a not-for profit children’s theater group operates from the building. Second,

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<sup>1</sup> 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).

<sup>2</sup> 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).

on occasion space in the building has been used for an “open mic night” for poetry and spoken verse. Third, an auditorium in the building has been used for film screenings. Fourth, there is a weekly “jazz night” conducted in the auditorium.

Mr. Levy claims that the events listed above are non-religious activities that are not under the control of the Bahá'is. He then argues that, as a result, the building has lost its “exclusivity” as a place of worship. He relies on *Le Parc Gourmet Inc. v. State Liquor Authority*, 95 AD2d 855 (2<sup>nd</sup> Dept., 1983) to support his argument. For the reasons set forth below, the Members of the Authority reject that interpretation of the meaning of “occupied exclusively.”

On June 10, 1952, the Authority issued Divisional Order 319, which recited a policy adopted by the Members of the Authority on May 13, 1952, with respect to the agency’s interpretation of the 200 Foot Law. As set forth in the Divisional Order, the policy stated that, in all cases involving the application of the 200 Foot Law:

...the discretion of the Authority shall be exercised in such a manner as to give the fullest scope of protection of the law to such educational institutions, churches and other places of worship, and that every reasonable doubt be resolved in favor of the religious or educational institution involved.

In the exercise of its discretion under the law, the requirement that the building be “occupied exclusively” as a school, church, synagogue or other place of worship shall be interpreted to afford the fullest protection of the law to those institutions in which activities of a non-educational or religious nature are present so long as those activities bear a logical relationship to the educational or religious purpose of the institution, and are fairly to be considered subsidiary to its main purpose.

While the statutes use the phrase “building occupied exclusively” as a school or place of worship, the courts have adopted a test that looks to whether the building is used primarily as a school or place of worship. The building will still be considered a school or place of worship within the meaning of the 200 Foot Law as long as any use is incidental to, and not inconsistent with or detracting from, the predominant character of the building as a school or place of worship. *Fayez v. State Liquor Authority*, 66 NY2d 978 (1985).

Applying that standard, the Second Department held that a building was still “occupied exclusively” as a place of worship when guest quarters were used by visiting church members and there was an apartment for the church’s pastor. *AJ & J Restaurant Corp. v. State Liquor Authority*, 205 AD2d 530 (1994). The First Department found that the use of the fifth floor of a location five nights a week (rent-free) by a chapter of Alcoholics Anonymous was not inconsistent with the building being “occupied exclusively” as a church. *Multi Millions Miles Corp. v. State Liquor Authority*, 55 AD2d 866 (1977) aff’d 43 NY2d 774. The Fourth Department came to a similar conclusion with respect to a place of worship where bridal showers and birthday parties were conducted. *Capizzi v. State Liquor Authority*, 231 AD2d 881 (1996).

In contrast, the First Department held that a church that is renting out its auditorium for baseball card shows, jewelry shows, oriental rug sales as well as renting out another portion of the building as an embassy was not “occupied exclusively” as a place of worship. *Brasero v. State Liquor Authority*, 176 AD2d 462 (1<sup>st</sup> Dept., 1991). The Second Department, in the *Le Parc Gourmet* case cited by Mr. Levey, found that the use of the building on a regular basis for a number of nonreligious activities that the church had no control over, including a commercial theatre group, private teaching program and concerts, did not meet the “occupied exclusively” standard. The Third Department made the same determination with respect to a church that rented out a wing of its building on a yearly basis to a rehabilitation program. *Taft v. State Liquor Authority*, 84 AD2d 623 (3<sup>rd</sup> Dept., 1981).

However, contrary to Mr. Levey’s argument, none of those cases set down a general rule with respect to the religious nature of the activity or whether the activity must be controlled by the religious organization. In order to give guidance as to what types of activities could be conducted at a school or place of worship, and still have the building be considered to be “occupied exclusively” as such, the statutes containing the 200 Foot Law were amended in 2007 to state that:

... a building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship by incidental uses that are not of a nature to detract from the predominant character of the building as a place of worship, such uses which include, but which are not limited to: the conduct of legally authorized games of bingo or other games of chance held as a means of raising funds for the not-for-profit religious organization which conducts services at the place of worship or for other not-for-profit organizations or groups; use of

the building for fund-raising performances by or benefitting the not-for-profit religious organization which conducts services at the place of worship or other not-for-profit organizations or groups; the use of the building by other religious organizations or groups for religious services or other purposes; the conduct of social activities by or for the benefit of the congregants; the use of the building for meetings held by organizations or groups providing bereavement counseling to persons having suffered the loss of a loved one, or providing advice or support for conditions or diseases including, but not limited to, alcoholism, drug addiction, cancer, cerebral palsy, Parkinson's disease, or Alzheimer's disease; the use of the building for blood drives, health screenings, health information meetings, yoga classes, exercise classes or other activities intended to promote the health of the congregants or other persons; and use of the building by non-congregant members of the community for private social functions. The building occupied as a place of worship does not cease to be "exclusively" occupied as a place of worship where the not-for-profit religious organization occupying the place of worship accepts the payment of funds to defray costs related to another party's use of the building.

Given the examples listed in the 2007 amendment, it is clear that there is no requirement under the 200 Foot Law that all activities must be religious and/or controlled by the religious organization. The test, as set forth in the *Fayez* case, is whether the activities are incidental to, and not inconsistent with or detracting from, the predominant character of the Center as a place of worship. In this case, the record demonstrates that the four activities meet that standard. In fact, the activities are entirely consistent with and promote not only the character of the Center as a place of worship, but also the principles of the Bahá'í faith.

As more fully explained in a letter submitted by Alemash Asfaw, the Secretary of the Spiritual Assembly of the Bahá'ís of the City of New York, the religion's principles include the concept of drawing closer to God through service to humanity. Bahá'ís are encouraged to engage in various paths of community service to both share the message of Bahá' u' llah, the religion's founder, and to contribute to the betterment of the world.

Mr. Asfaw states that the activities conducted at the Center, including the four that are relevant to this determination, are carried out as forms of service to humanity and as a means of teaching the Bahá'í faith to the public. He explains

that these activities are used to “connect the hearts of the people with the teachings of Bahá’ u’ llah through the use of the arts, social discourse, fellowship, and raising awareness about basic human rights issues.”

While these four activities may not be considered “religious” in nature, the record clearly demonstrates that they are intended, at least in part, to promote the Bahá’i faith and as a means to support the teachings upon which the religion is based. Attendees at these events are surrounded by literature explaining the Bahá’i faith and its principles. Bahá’i prayers are read at the events. Activities prohibited by the Bahá’i faith, such as consuming alcoholic beverages, is banned at the events.

Accordingly, the Members of the Authority find that the Center is a building occupied exclusively as a place of worship. Therefore, the 200 Foot Law precludes the issuance of an on-premises liquor license at 41 East 11<sup>th</sup> Street in Manhattan.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on January 16, 2013.



Jacqueline Held  
Secretary to the Authority