

STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law to property
located at 149 West 46th Street, Manhattan

DECLARATORY
RULING
2013-00214

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 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.² 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 Warren Pesetsky, Esq., on behalf of a prospective applicant for a declaratory ruling as to whether a location is subject to the 200 Foot Law. As set forth in Mr. Pesetsky’s November 5, 2012 letter, the relevant facts are as follows: (a) the proposed licensed establishment is located at 149 West 46th Street in Manhattan; (b) there has been an on-premises liquor license in place at 149 West 46th Street since 1995; and (c) St. Mary’s Time Square Church is located at 145 West 46th Street. Mr. Pesetsky does not dispute that, for purposes of this request, the church is on the same street and within 200 feet of the proposed licensed establishment. He does note that, on the same street as, and within 200 feet of, the church are several establishments with on-premises liquor licenses.

Mr. Pesetsky has presented evidence to the Authority showing that the proposed licensed premises has held an on-premises liquor license since at least 1995. The Authority’s records confirm that the most recent license was issued in 1999 and was in effect until April, 2012. Records regarding other prior occupants and their licenses are no longer available for this location. Therefore the Authority

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).

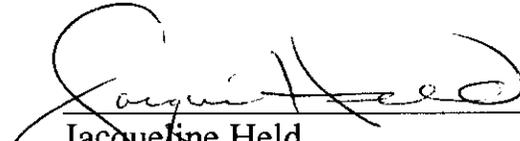
² See Alcoholic Beverage Control Law §§64(7)(c), 64-a(7)(a)(iii), 64-b(5)(a)(iii), 64-c(11)(a)(iii), 64-d(8)(c) & 105(3)(a).

will presume that the representations made by Mr. Pesetsky are accurate with respect to the licensing history prior to 1999.

In addition to the information concerning the location's licensing history, representatives of the church advised the Authority that, until recently, the building was not used exclusively as a place of worship. As explained by Mr. Pesetsky, the church has been in operation for many years and was present when previous applicants applied for and received on-premises liquor licenses. Mr. Pesetsky also notes that the location has never been used for any other purposes other than a licensed premises.

Given the continuous licensing of this location, together with the representation that the building occupied by the church has only recently been used exclusively as a place of worship, the Members of the Authority find that the 200 Foot Law does not prohibit the issuance of an on-premises liquor license at 149 West 46th 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