STATE OF NEW YORK: LIQUOR AUTHORITY

Application of 200 Foot Law on Property Located at 75 Essex Street, Manhattan

DECLARATORY RULING 2016-00220

Preliminary Statement

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.

The Members of the Authority are in receipt of a request from Elke A. Hofmann, 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 the purposes of this request, Ms. Hofmann does not dispute that the location is on the same street as and within 200 feet of the Broome Street entrance to the school building known as the Seward Park Campus which houses five different high schools. She seeks a ruling that the building is not occupied exclusively as a school. A liquor license has never been issued at 75 Essex Street.

The ABCL prohibits the Authority from issuing a retail license for the sale 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."

Notwithstanding the general prohibition created by the 200 Foot Law, the building housing the school must be occupied exclusively as a school, ABCL §64(7)(a). The applicant presents three activities that occur at the school which, applicant argues, cause the school building to not be "occupied exclusively as a school." The first is that a portion of the school campus is administered by the City Parks Department and open to the general public as a playground. This is part of the City's "Schoolyards to Playgrounds" program which renovates schoolyards for use by the general public during non-school hours. The second is that the gymnasium and the pool are available for rental. The pool is rented out to the Royal Athletic Swimming School, a for-profit swimming school that offers classes in two locations in New York City. The third is that the roof deck of the school has been rented for events, such as film screenings. The roof deck is currently under construction and not available for rental, but will resume rentals upon completion in 2016.

In defining the term "exclusively" occupied as a place of worship the ABCL §§ 64 et seq. sets forth a myriad of activities which are considered to be incidental to and not detracting from the predominant character of a building used as a place of worship. The statute is silent as to activities at a school. In 111 East 22nd Management Corp. v. NYSLA, 152 Misc2d 842 (1991), the court was presented with a fact pattern where a building housed a school and which also contained dental and medical clinics, adult day training and vocational workshops, an adult rehabilitation center, an in-house print shop, adult day services administration and an outside vendor technology resource center. The court held that these activities were not incidental to

the operation of a school. The building appeared to be more of a multi-use facility, with the school just one of many activities conducted within the building.

The Authority's Divisional Order #319 addresses the issue of proximity to schools and places of worship, and provides that the discretion of the Authority shall be exercised in such a manner as to give the fullest scope of protection of the law to schools and churches so long as the non-educational or non-religious 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.

Using the same principles, the three activities noted by the applicant can be assessed based upon whether they are incidental to the operation of a school or whether they detract from the predominant character of the building as a school.

The first objection is that the public uses the playground of the school during non-school hours. The public that will use the playground is for the most part school-age children. This would not be appreciably different than if the playground were reserved only for the children who attend the school. It simply makes better or more efficient use of land available for playgrounds without detracting from the predominant character of the building as a school.

The second objection is that the school rents out the gymnasium and the pool. The pool is rented out to a swimming school which teaches children to swim. Again, the pool is being utilized for instruction and by school age children. Such activity would seem to be in keeping with the broad educational purposes of a school.

The third objection is that the roof deck has been, in the past, rented out for events. The applicant states that while the renting of this space has ceased during renovations to the roof deck, it will resume upon completion. Applicant's Exhibit D indicates the roof deck is a project of the New Design High School, one of the five small high schools within the school building. This "Rooftop Legends" contains artwork in various mediums that creates an outdoor museum space to provide a unique way for young people to learn, connect and communicate. Applicant notes that in 2012, this space was rented to screen short films from around the world. Applicant claims that many of these films would not be appropriate for high school students and that this detracts from the use of the campus as a school.

The question is whether the rental of the rooftop deck or the pool, or the extended use of the playground during non-school hours by children who do not attend the school, detracts to such an extent that the building can no longer be said to be predominantly a school.

ABCL §64(7)(d-1) provides that a place of worship does not cease to be so when it hosts: bingo or other games of chance as a means of raising funds for the not-for-profit religious organization; 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 does not cease to be "exclusively" occupied where the payment of funds is accepted to defray costs related to another party's use of the building.

The Members find that there is no reason why these illustrative activities as they relate to places of worship, should not be equally applicable to schools. Based upon the facts presented and the applicable law, the Members further find that the activities presented by

applicant here are incidental to the operation of the school and do not detract from the predominant character of the building as a school.

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on January 19, 2016.

Jacqueline Held
Acting Secretary to the Authority