

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: Club licensees and agency staff

SUBJECT: Restrictions on sale/service of alcoholic beverages by club licensees

The Alcoholic Beverage Control Law ("ABCL") provides for the issuance of an on-premises license to a "club."¹ A "club" is defined as "an organization of persons incorporated pursuant to the provisions of the not-for-profit corporation law or the benevolent orders law... which does not traffic in alcoholic beverages for profit and is operated solely for a recreational, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain..."² A club licensee may only sell alcoholic beverages to a member of the club and to a guest of the member who accompanies the member to the licensed premises.³ In certain situations, a club licensee may also obtain a catering permit to sell/serve alcoholic beverages to non-members at functions or events held either at the licensed premises⁴ or at other locations.⁵ In return for the restrictions placed on a club license, the organization pays a significantly lower license fee than that paid by an entity that holds a "traditional" on-premises license.⁶

The Authority regularly receives inquiries from organizations that hold club licenses with respect to the ability of the licensee to sell or serve alcoholic beverages to individuals who are not members of the club. This advisory is intended to provide uniform guidance to club licensees on this issue. Bulletin 276 (issued on November 5, 1955) and Bulletin 477 (issued on July 9, 1974) are hereby rescinded. Please note that the guidance provided herein applies only to a not-for-profit organization that is selling/serving alcoholic beverages pursuant to a club license. If the organization holds a traditional on-premises license, either in addition to or instead of the club license, the restrictions imposed on the club license do not apply to activities conducted under the traditional on-premises licenses.

Member of a club

As noted above, a club licensee may only sell alcoholic beverages to a member or the member's guest (see below). A "member" is defined as "a person who whether a charter member or admitted in agreement with the by-laws of the club, has become a bona fide member thereof, who maintains his or her membership by the payment of his or her annual dues in a bona fide manner in accordance with the by-laws and whose name and address is entered on the list of members..."⁷ This means that the person must be a bona fide member of the entity that holds the club license, and not a related or affiliated organization.

¹ ABCL §64(5)

² ABCL §3(9)

³ ABCL §106(8)

⁴ ABCL §98(2)

⁵ ABCL §98(4)

⁶ ABCL §66(4)

⁷ ABCL §3(9)

However, in certain cases a person who belongs to a related or affiliated organization may, for purposes of being able to be served alcoholic beverages by a club licensee, be considered to be a member of that club. In the case of a “veterans club”, a person who has in his or her possession an identification card indicating his or her membership in the national veterans' organization with which the club is affiliated is considered a member of that club and can be served alcoholic beverages at that club.⁸ In addition, a person who is a member of a chapter or lodge of a not-for-profit corporation or benevolent order that qualifies as an organization described in section 501(c)(8) or 501(c)(10) of the United States internal revenue code who has in his or her possession an identification card or other proof of membership is considered a member of another chapter or lodge of that not-for-profit corporation or benevolent order and can be served alcoholic beverages at the other club.⁹

Guest accompanying a member of a club

The ABCL provides that a club licensee may only sell/serve alcoholic beverages to its members (see above) and “to their guests accompanying them.”¹⁰ The issue raised by this restriction is determining whether a person is a guest accompanying a member of the club. The ABCL does not provide any definition or explanation as to when a person is considered to be a “guest accompanying” a member. However, the Authority interprets the phrase “guest accompanying” to mean that the person is invited by and: (a) physically goes with (enters) the club’s licensed premises with the member; or (b) meets the members at the club’s licensed premises.

In either case, the invitation must take place in advance of the non-member entering the club’s licensed premises. The club licensee has a statutory duty to only sell/serve to bona fide guests of its members. In situations where the member has invited multiple guests, such as a reception or party, the Authority recommends that the club licensee maintain a list of the persons who were invited to the event. However, the use of “sign-in books” or similar systems, where a person comes to the club’s licensed premises uninvited and becomes a “guest” by signing a list (and becoming the guest of a member already present), does not render the person a bona fide guest who can be sold/served alcoholic beverages at the club’s licensed premises.

⁸ ABCL §3(9) For purposes of this exception a “veterans club” includes the following organizations: the Grand Army of the Republic; the United Spanish War Veterans; the Veterans of Foreign Wars; the Jewish War Veterans of the United States, Inc.; the Catholic War Veterans, Inc.; the Italian American War Veterans of the United States, Incorporated; the Polish Legion of American Veterans, Inc.; the Marine Corps League; the Military Order of the Purple Heart, Inc.; the American Legion; the Disabled American Veterans; AMVETS; American Veterans of World War II; Masonic War Veterans of the State of New York, Inc.; Veterans of World War I of the United States of America Department of New York, Inc.; China-Burma-India Veterans Association, Inc.; Polish-American Veterans of World War II; the Sons of Union Veterans; Vietnam Veterans of America; the Eastern Paralyzed Veterans Association; the Sons of the American Legion; or the American Legion Auxiliary.

⁹ ABCL §3(9)

¹⁰ ABCL §106(8)

Catering permits for events at the licensed premises

It is not the intent of the ABCL to allow club licensees to compete with traditional on-premises licenses who provide catering services to the general public. Therefore, the ability of a club licensee to obtain a caterer's permit is, compared to traditional on-premises licensees, severely restricted. There are only two exceptions to the general prohibition against issuing a club licensee a caterer's permit for an event at the club's licensed premises.

First, a club licensee can obtain a caterer's permit for a function or event to be held at the licensed premises if one of the following conditions are met: (a) the event is being held by an organization affiliated with the club; (b) the event is being held by an organization not affiliated with the club, provided that the event is being held in conjunction with the use of the club's athletic or sports facilities; or (c) the event is to be held by a charitable or non-profit organization and that organization has one or more members who are also members of the club. The club will not be eligible for the permit if it has solicited the event, or advertised the event in any manner as open to the public. Alcoholic beverages may only be sold to persons invited to and attending such function, occasion or event.¹¹

Second, a club licensee can obtain a caterer's permit for an event at its licensed premises if it satisfactorily demonstrates to the Authority that there is no other suitable establishment with an on-premises license available within a reasonable distance of the club.¹² When submitting an application for such a permit, a blanket statement that there are no other suitably licensed establishments within a reasonable distance of the club's licensed premises is not sufficient. The application should include a statement explaining the efforts to obtain accommodations for the event at licensed establishments that cater events. That explanation should include the names and addresses of the three closest establishments within a reasonable distance and the reasons why those establishments are not suitable for the event.

Examples of sufficient reasons why a licensed establishment would not be suitable for an event include: the venue does not have adequate facilities to accommodate the number of persons reasonably expected to attend the event; the event (such as a wedding reception or anniversary dinner) is date specific and the space is not available on that date; or the event will be held during the winter and transportation and/or inclement weather would pose a hardship to those traveling to the licensed establishment. Club licensees are reminded that the permit application must include a statement with the required information for the Authority's review and consideration. Failure to provide the statement will result in disapproval of the application.

Catering permits for events away from the licensed premises

A club licensee can obtain a caterer's permit for an event that is being held away from the club's licensed premises only if the permit "is exclusively for the use and benefit of the club members only and is so restricted."¹³ In other words, while the event may be open to persons other than members of the club, the permit can only be used to sell/serve alcoholic beverages to members of the club. Guests of members and the general public cannot be sold/served alcoholic beverages under the permit.

¹¹ ABCL §98(2)

¹² ABCL §98(3)

¹³ ABCL §98(4)

Soliciting catering events by club licensees

Club licensees should not advertise to solicit catering business in connection with wedding receptions and other events. The clear intent of the definition of a “club” under the ABCL is to limit the availability of club licensees to organizations that are not in the business of selling alcoholic beverages. This intent is demonstrated in the limitations placed on club licensees in obtaining a catering permit. If a not-for-profit organization seeks to operate a catering business or other type of establishment serving the general public, the organization should apply for a traditional on-premises license. In fact, as noted above, a club licensee cannot obtain a catering permit for an event at the licensed premises if the licensee solicited the event or advertised the event as open to the public.¹⁴

Traditional on-premises license

Not-for-profit organizations that wish to operate restaurant, catering halls and other establishments open to the public should obtain a traditional on-premises license. Such a license can be used either instead of or along with a club license. The organization can designate certain parts of the location to be part of the club’s licensed premises and other parts (a banquet hall, for example) to be part of the traditional on-premises license.

¹⁴ ABCL §98(2)(a)