

Beware Changing Your M.O.

Law Requires Permission, Not Just Notice

BY KEVEN DANOW

Section 48.8 of the New York State Liquor Authorities regulations provide in part:

■ *Each license issued hereunder shall be subject to the licensee continuing to conform with all representations set forth in the application for license and the provisions of this Part and any amendment thereto applicable to the type of premises under which such license was applied for and issued. Such representations shall constitute continuing representations for the life of the license and all renewals thereof. Any change or deviation therefrom in any material respect, without the permission of the Authority, shall be cause for the institution of proceedings to revoke, cancel or suspend such license or refusal to renew the same.*

The “Method of Operation” section of the instructions to the on premise license application states:

■ *Answer ALL questions completely. The information provided in this section will be the method of operation you are approved for and will be binding. Should you wish deviate from this method of operation in any way, you must first apply for and received permission by the Authority. Any change in method of operation must be approved by the State Liquor Authority prior to initiating the change.* (Emphasis in original.)

The Authority promulgated revised form 112311 entitled “Change Method of Operation.” Until recently, some attorneys and licensees believed, if they filed the form and heard nothing from the Authority, it was safe to move forward with a material change in the way the licensee conducted its business. At a recent full board meeting the SLA made

it clear that actual “permission of the Authority” is required.

The licensing bureau rejected the renewal application of an on-premise licensee that in its original application had described its method of operation as an upscale French restaurant. Sometime thereafter, the business morphed into a late night dance club. Prior to the application for the renewal of its license, a number of violations were placed upon the premises by the City of New York. The attorney for the licensee asked for and received a hearing before an administrative law judge. The ALJ found that all of the violations which were in the record before him had been removed. He also found that the licensee had sent a notice of change of method of operation to the Authority, which, in his opinion, was sufficient. The licensee’s attorney asked the Members to uphold that finding and direct the licensing bureau to renew the license.

Local residents and members of the Community Board came out in force to object. They complained about constant noise and quality of life problems. Through a series of pointed questions, Chairman Rosen elicited testimony that the licensee had made material and substantial changes to its method of operation without first obtaining permission from the Authority.

The licensee’s attorney argued that the administrative law judge was correct. The statute only required notice to the Authority, which had been given.

Chairman Rosen made it clear that the Members of the Authority would overrule the administration law judge's finding that simply sending a notice to the Authority of a change in method of operation is sufficient. If a licensee does not actively obtain permission for the change, it places its license at risk.

Thomas Donohue, Special Counsel, argued that the licensee not only changed its method operation without permission; but the change was so material that it no longer was a method which was permissible under the class of license held by the applicant. (A restaurant requires a chef, suitable kitchen facilities and must be open regularly for the service of meals to guests for compensation. The service of only sandwiches and salads does not meet the food requirements needed to operate a restaurant.)

The Members of the Authority are attempting to strike a balance between community boards that do not want any new licenses issued in their area and entrepreneurs who bring tax dollars and employment to the state. Whether the licensee is a full service package store that claimed it would only sell specialty beverages or a night club that claimed it was going to operate as a restaurant, it is clear that those who attempt to use “bait and switch” tactics in the licensing process, promising one method of operation to get past the community board or the Authority and then change to another, will meet with little sympathy from the SLA.

In the words on revised form 112311:

- *You must operate according to the method of operation originally approved by the authority until you receive written permission from the authority to change the method of operations.*
- *Failure to conform to the originally approved method of operation may result in disciplinary action.*

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