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July 23, 2021

Andrew Vallejos, Esq.
Director
Alcoholic Beverage Control Division
P.O. Box 25101
Santa Fe, New Mexico 87504

Re: Comment on Proposed Regulations

Dear Mr. Vallejos:

These are my comments to the regulations.

Operation and Profiting by Authorized Persons. 15.10.70. Thank you for eliminating the words “approved operator” in 15.10.70.8(A). That phrase was interpreted by prior administrations to mean that only the lessee could operate or profit from the sale of alcoholic beverages. Use of the words “licensee or lessee” eliminates much of that confusion. My biggest problems in the past were hotel management agreements where the employees were sometimes employees of the owner of the hotel and sometimes employees of the hotel management company. It shouldn’t matter which company is the employer as long as both parties are approved as the owner and lessee of the license. Could you please insert “or lessee” in 15.10.70.8 (A) (1) and (A) (2)?

Similarly, I suggest that the phrase “approved operator” be eliminated in 15.10.70.8(B) and that “owner or lessee” be used in place of “approved operator” throughout 15.10.70.8(B). The owner and lessee of a liquor license should be permitted to split profits on the license. In the past, the ABC required that rent under a liquor license lease a flat monthly amount and not a percentage of sales. However, in the case of a hotel management agreement, the income is often deposited by the management company in the account of the owner of the hotel and the management company receives a percentage of the income as the management fee. As long as the hotel owner is also the owner of the liquor license and the management company is the approved lessee of the liquor license, it shouldn’t matter that the management company is paid a percentage of liquor sales as part of a percentage of all hotel income. This would be real progress for hotels in our tourist-based economy.

The hotel management exception was added in 2017, but a phrase was added between the time that public comment period ended and the regulation was published. (the phrase about approval by the director of a reasonable split of profits). If “approved operator” is eliminated, as suggested above, the hotel management exception really isn’t needed. (Section (4) of (B) could be eliminated.)

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Finally, the concept of affiliate is included in the exception to the profiting. (Not as clearly as possible, but the word affiliate appears in Section B.) It should be included in the operation part A of the regulation. I have had several affiliates approved over the years. A big company may have a number of subsidiaries. One of the subsidiaries is a company named something like "Big Company Associates." All employees of all the subsidiaries are employees of the employment subsidiary. The benefit of a separate employment subsidiary is that employees do not lose seniority when transferred from one subsidiary to another subsidiary.

Sales to Intoxicated Persons This regulation is often referenced as the Happy Hour regulation. As the title indicates, it is intended to eliminate the promotions that encourage customers to drink too much and then drive home. There is no provision of the Liquor Control Act that is intended to discourage people from drinking as much as they like at home. (There are certainly public health and other reasons to discourage individuals from drinking too much, but the ABC's authority does not extend beyond what occurs on the licensed premises.) The provision only addresses "SALES" to intoxicated persons. If someone buys two of the same package product because there is a two-for-one promotion, that would be illegal if the customer were intoxicated at the time of purchase. It doesn't matter what the quantity or the cost of the packaged alcoholic beverage is as long as the individual making the purchase is not intoxicated. If the customer is not intoxicated at the time of the purchase, there is nothing wrong or illegal about the sale and it doesn't violate any provision of the Liquor Control Act.

The addition of package sales to this regulation is a cost control and is anti-competitive. Owners of a business should be able to sell their products at any price they like. What if the product has been sitting on the shelf for a long time and no one wants to buy it? Why is the licensee required to keep it on the shelf? Why can't it be sold below cost?

I don't see any provision of the Liquor Control Act which provides authority for the addition of cost controls on package liquor sales.

Controlled Access Areas and Segregated Sales. The sign required in the segregated sales area regulation makes no practical sense in a convenience store or a grocery store. Minors can't be prevented from entering the area unless the licensee posts guards around the liquor display areas. If a minor enters a convenience store alone, the licensee can't be expected to prevent a minor from walking by the beer coolers. The same problem exists in a grocery store. If mom or dad asks her or his child to go get some bread, the minor might go down the liquor aisle to get there. That shouldn't be something illegal for which the licensee can be cited.

Placement of the liquor department in the corner of a grocery store used to be the practice, but it is often in the middle of the stores now. When the liquor department was located in the corner of a grocery store, minors sometimes went into the department when no one was there, opened a container of liquor and drank it. Location of liquor in the middle of the store means that more people will see what is happening on that aisle, but it also means that there is a possibility that a minor will walk down the aisle alone.

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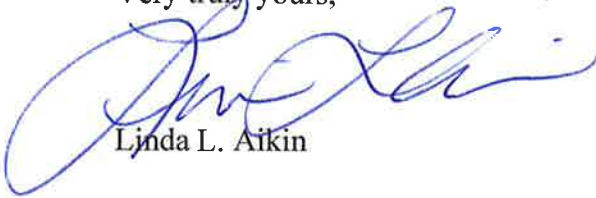
When the segregated area concept was first proposed by Hess Yntema (former ABQ city councilor), he complained that liquor should not be sold on the same aisle as items like diapers. The segregated liquor area regulation goes a little further than needed to shield and protect individuals from seeing alcoholic beverages.

Outdoor areas attached to structure. I agree with the other comments that the new definition of licensed premises does not require that outdoor areas be attached to a building. When I had a client in Nob Hill, he could not get the patio approved because there was a sidewalk between the building and the patio which was not under the exclusive control of the licensee.

Home deliveries within local option district. I don't agree with this requirement. It is way too limiting for small LODs like the Village of Los Ranchos, Rio Communities, etc. Also, no one other than zoning or planning employees of an LOD know where the boundaries of LODs are.

Thank you for your consideration.

Very truly yours,



Linda L. Aikin