

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Steven Grossman
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

DECISION

WASHUT & WARE, LLC DBA JAKE'S RESTAURANT
17 KING STREET
NORTHAMPTON, MA 01060
LICENSE#: NEW
HEARD: 10/24/2012

Washut & Ware, LLC dba Jake's Restaurant (the "Applicant") applied for an annual wine and malt beverages license to be issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held an informational hearing on Tuesday, October 24, 2012, to determine whether the application under M.G.L. Chapter 138 should be approved or disapproved.

The following documents are in evidence:

1. Chapter 494 Acts of 2004;
2. Northampton City Council Order dated June 5, 2003;
3. Spreadsheet of Seasonal License Holders converted to Annual per Chapter 494 of the Acts of 2004 in the City of Northampton;
4. Chapter 144 of the Acts of 2008;
5. Northampton City Council Order dated April 19, 2007;
6. Chapter 498 of the Acts of 2004;
7. Chapter 77 of the Acts of 2004;
8. Legislative file on Chapter 494, Acts of 2004; and
9. Memorandum and Motion of the City of Northampton dated November 13, 2012.

There is one (1) audio recording of this hearing.

FACTS

1. On December 23, 2011, the Commission approved Washut and Ware's application for a seasonal on-premises, wine and malt beverages license to be issued pursuant to M.G.L. c. 138, §12, located at 17 King Street, Northampton, MA. (Commission Records)
2. On September 19, 2011, Washut and Ware applied for an annual wine and malt beverages license. The Local Board granted this application for an annual license on October 5, 2011. Essentially, Washut is trying to convert its seasonal wine and malt beverages license to an annual wine and malt beverages license.

3. According to the 2010 federal census¹, Northampton had a population of 28,549. (Commission Records)
4. Based on this population, Northampton can issue six (6) annual on-premises wine and malt licenses. (Commission Records)
5. Northampton has issued thirty-two (32) wine and malt beverages licenses pursuant to M.G.L. c. 138, §12. (Commission Records)
6. The Applicant argues that it is eligible to convert its seasonal license issued after the Commission's approval first given on December 23, 2011.

DISCUSSION

The general rules for construing statutes are well established. Statutory interpretation always begins with the language of the statute, "the principal source of insight into the legislative purpose." Hoffman v. Howmedica, Inc., 373 Mass. 32, 37 (1977). "A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning in the light of the aim of the Legislature unless to do so would achieve an illogical result." Sullivan v. Brookline, 435 Mass. 353, 360 (2001).

Statutes must be interpreted "according to the intent of Legislature ascertained from all its words construed by the ordinary and approved usage of the language... to the end that the purpose of its framers may be effectuated." Hanlon v. Rollins, 286 Mass. 444, 447 (1934). Accord Boston Police Patrolmen's Ass'n v. Boston, 435 Mass. 718, 719-720 (2002). Where the statutory language is not conclusive, we may "turn to extrinsic sources, including the legislative history and other statutes, for assistance in our interpretation." Chandler v. Country Comm'rs of Nantucket County, 437 Mass. 430, 435, 772 N.E. 2d 578 (2002), citing EMC Corp V. Commissioner of Revenue, 433 Mass. 568, 570-571 & nn. 6-8 (2001) (other statutes), and Barclay v. DeVeau, 384 Mass. 676, 680, 429 N.E.2d 323 (1981) legislative history). Commonwealth of Massachusetts v. Deberry, 441 Mass. 211, 215-16, 804 NE.2d 911, 915 (2004).

On January 7, 2005, the legislature passed St. 2004, c. 494 An Act Authorizing The City of Northampton to Convert Seasonal Licenses for the Sale of Wines and Malt Beverages To Be Drunk On the Premises, which states, in pertinent part,:

Notwithstanding section 17 of chapter 138 of the General Laws, the licensing authority of the City of Northampton may convert all issued seasonal licenses for the sale of wines and malt alcoholic beverages to be drunk on the premises pursuant to section 12 of said chapter 138 to annual licenses for the sale of wines and malt alcoholic beverages to be drunk on the premises pursuant to section 12 of said chapter 138. Notwithstanding section 15A of said chapter 138, seasonal licenses being converted to annual licenses pursuant to this act shall not be subject to the notification of abutters requirement. The licenses shall be subject to all of said chapter 138, except said sections 15A and 17.

The plain language of c. 494 permits the Local Board to convert "all issued seasonal licenses for the sale of wine and malt beverages to be drunk on the premises...to annual licenses." (emphasis added) This

¹ General Laws chapter 138, section 17 provides, in pertinent part, that "[t]he population of any city or town for the purposes of this section shall be that enumerated in the most recent federal census."

special legislation does not limit the power to convert only the seasonal licenses that were issued on the effective date of this legislation. It allows the conversion of all seasonal licenses issued by the Local Board, even those issued after the effective date of the special act. Where the language of legislation is clear and unambiguous, it is conclusive as to legislative intent. Pyle v. School Committee of South Hadley, Massachusetts, 423 Mass. 283, 285-86 (1996).

A comparison between c. 494 and other statutes authorizing a municipality to grant licenses in excess of the §17 quota makes clear that when the legislature has intended to limit such authority to either existing licenses or to a finite number of additional licenses, it knows how to say so. Where the legislature has intended to limit an exemption to currently-issued seasonal licenses, it has demonstrated its ability to do that. In 2008, the legislature passed a special act authorizing the licensing authority of the City of Northampton to “convert the five (5) currently-issued seasonal licenses for the sale of all alcoholic beverages to [be] drunk on the premises to annual licenses.” Exhibit 4 (St. 2008, c. 144). In this 2008 special act affecting seasonal all alcoholic beverages licenses under section 12 of chapter 138 of the General Laws, the legislature chose to explicitly limit the authority in c. 144 of the Acts of 2008 but the Legislature did not limit the authority granted in c. 494 of the Acts of 2004. Its failure to do so cannot be ignored.

Finally, the legislative history of chapter 494 of the Acts of 2004 (that was identified as House Bill 5085 in the legislature) supports the conclusion that the legislature intended to authorize the licensing authority of the City of Northampton to convert all issued seasonal wine and malt beverages licenses. An effort in the Senate to amend H. 5085 by inserting the word “presently” before the word “issued” in the first sentence thereof, so as to read “...may convert all *presently* issued seasonal licenses...” was unsuccessful and that word was stricken from the enactment. Exhibit 8. The failure of the amendment which would have explicitly limited the act to the twenty-seven (27) extant seasonal licenses is a clear indication that the legislation did not intend to impose that limitation on the Local Board’s authority to convert seasonal wine and malt section 12 licenses to annual licenses. See W. Massachusetts Elec. Co. v. Dep’t of Pub. Utilities, 373 Mass. 227, 234 n. 12 (1977) (the addition of a word in the course of the legislative process may be considered in undertaking to determine the Legislature’s intention). See also Bay Colony Mktg. Co., Inc. v. Fruit Salad, Inc., 41 Mass. App. Ct. 662, 666 n. 5 (1996).

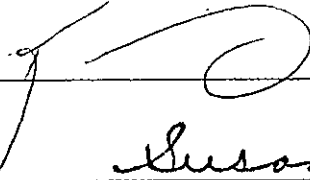
CONCLUSION

The Commission concludes that the Local Board has the authority created by the 2004 special act to convert all issued seasonal wine and malt beverages section 12 licenses to annual licenses. The Commission is prepared to approve the application of Washut and Ware to convert its existing seasonal wine and malt beverages section 12 license to an annual wine and malt beverages section 12 license, subject to the normal course of the licensing process and M.G.L. c. 138.²

² This normal course of the licensing process includes the obligation of the local licensing authorities to re-consider and ratify at a duly noticed public meeting the decision to grant this application for an annual wine and malt beverages section 12 license. This ratification must be submitted on a Form 43 dated to reflect accurately the date of this required ratification. This ratification is required because the Local Board acted prematurely in granting the pending application. A seasonal license could not have been issued lawfully before December 23, 2011, the date the Commission approved the application for the seasonal wine and malt beverages section 12 license; yet, the application to convert a purportedly issued seasonal license was filed on September 19, 2011 and in fact granted by the Local Board on October 5, 2011. These actions were, at best, premature and must now be timely ratified.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kim S. Gainsboro, Chairman



Susan Corcoran, Commissioner



Kathleen McNally, Commissioner



Dated: December 28, 2012

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

cc: Alan Seewald, Esq., via Facsimile 413-549-3818
Frederick G. Mahony, Chief Investigator
Administration
File