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Are you doing any Spring
Cleaning – file storage, officer
updates, etc...? If so, please
send in your Tips so we can
share in the next Newsletter!

Submit to pbagby@amf.com

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KAMENETZ ANNOUNCES USE OF REMOTE VIDEO TECHNOLOGY

Liquor License Hearings Using Skype

Towson, Maryland (March 25, 2013) - County Executive Kevin Kamenetz announced that participants in Liquor License Hearings may now attend via a remote video connection through the County's Skype account. This technology was used for the first time today for a routine hearing with P.F. Chang's China Bistro, whose corporate headquarters are located in Arizona.

"This is particularly valuable to liquor license holders at national chain restaurants who would otherwise need to fly in from out of state for what usually amounts to an eight-minute hearing," said County Executive Kevin Kamenetz. "This is yet another way that we are taking advantage of current technology to better serve our constituents and businesses."

Skype is a proprietary Voice Over Internet Protocol (VOIP) service that allows users to communicate with peers by voice using a microphone, video by using a webcam, and instant messaging over the Internet. The Baltimore County Liquor Board will allow licensees to attend hearings via a video connection.

"We welcome the opportunity to participate in Liquor Board hearings through electronic technology," said **Joanne K. Zern Licensing Manager for P.F. Chang's China Bistro**. "Not only does this provide cost savings in travel expenses, but it also saves time and resources, allowing our executives to attend a hearing and then immediately return to their regular course of business without the need to spend time traveling."

"This is a very business-friendly, common sense accommodation that is effective for us and is particularly helpful for those popular national chain restaurants," said Charles Klein, Baltimore County Liquor Board Chair. Klein said that the Liquor Board plans to conduct a video interview as part of a March 25 hearing.

<http://www.baltimorecountymd.gov/News/releases/0326video.html>

Tension Between Quotas and Economic Development

Bart Harriman, Clark, Quinn, Moses, Scott & Grahn, LLP

At the conclusion of our nation's failed experiment, Prohibition, states were granted the authority to regulate alcohol largely in the manner they saw fit. In an effort to minimize the prevalence of alcohol in society, thus continuing the theme of temperance, many states passed laws limiting the number of alcoholic beverage permits available in communities. These limits are often referred to as "quotas" or "quota laws." And, although one presumed goal of these quota laws may have been met, *i.e.* to limit the negative effects associated with too many businesses selling alcoholic beverages in close proximity, other unintended consequences have arisen, which run counter to other laws, notably to generate money for the state, create jobs and enhance competition. The Indiana legislature has created an increasingly convoluted system of quota laws by reducing the number of permits for certain facilities while increasing the number of permits for other types of facilities.

For the most part, quotas have been reduced, *i.e.* there are fewer permits that may be issued by the Indiana Alcohol and Tobacco Commission (the "Commission"). This reduction in permits has created some real, practical difficulties for those interested in doing business in Indiana. The worst case scenario is that those interested in starting a business cannot obtain permits from the Commission or on the private market and therefore cannot operate. Depending on the demand for permits in a particular community, the cost for such permits on the open market can range anywhere from a few thousand dollars to well above \$500,000, which is drastic compared to the cost of obtaining permits at the Commission for the annual renewal fee of between \$500 and \$1,000. This is a significant capital investment that can be a barrier to market entry for many businesses.

A good example of how the quotas negatively impact economic development and the creation of jobs can be seen when larger grocery stores desire to locate in communities or when developers attempt to develop (or redevelop) certain properties into, for instance, outside malls, also known as "Lifestyle Centers." Indiana -- for the most part -- does not distinguish between permits issued to small convenience stores that may sell a few cases of beer a week and large grocery store businesses that sell tens of thousands of dollars of alcohol per week. And, because there are many more convenience stores than large grocery stores in Indiana, convenience stores have already obtained the majority of the available grocery store permits. As a result, larger grocery stores are struggling to obtain permits to operate, notwithstanding the fact that local communities desire such development and expanded services.

Indiana's quota system also places large scale retail developments at risk. In the past, when permits were available, such permits were often an afterthought for developers. Today, however, in order to get an average Lifestyle Center off the ground, developers must secure four or five full-service restaurants. One of the main reasons for this is because restaurants typically desire to locate in clusters with other restaurants, understanding that having multiple restaurants in close proximity will drive traffic to their restaurant. Because of this desire to cluster, restaurant tenants in Lifestyle Centers often request co-tenancy clauses in their leases, which require landlords to have a certain, minimum number of full-service restaurants within the development at all times, otherwise the landlord is in default. This forces landlords to aggressively seek out permits and restaurant tenants in their developments. However, because of the quota laws, there

is often a lack of available restaurant permits in some communities, and therefore large scale retail projects can be placed in jeopardy.

While the Indiana legislature has reduced the number of permits for certain permits over the years, it has also recognized the economic development potential of certain types of retail facilities, and thus created additional “off quota” permits that can be obtained for an annual renewal fee of \$1,000. These types of facilities include, but are not limited to the following: (i) facilities owned by government entities, such as arenas and stadiums, often referred to as “Civic Centers;” (ii) certain types of Catering Hall facilities for private events; (iii) permits located near rivers, “Riverfront Permits;” and (iv) permits in certain municipalities that have the political clout to change the law. The goal of these permits is to incent retail economic development, and other states have passed similar laws. For instance, the Michigan legislature passed a law allowing for additional permits to be issued in certain redevelopment areas, based on the amount of money invested in the particular area.

Like many alcoholic beverage laws, no matter how antiquated they may seem today, there was likely a rationale behind their passage. In this day and age, however, such quota laws, at least the manner in which they have evolved in Indiana, serve as a hindrance to creating jobs, competition and generating revenue for the State of Indiana.



Bart Herriman is a former Chairman of the Indiana Alcohol and Tobacco Commission (“ATC”) and current partner at the Clark Quinn Law Firm in Indianapolis, Indiana. Prior to serving as Chairman of the ATC, Bart worked in the Indiana Governor’s Office and served as Chief Legal Counsel to the Senate Minority Caucus and City Attorney for a municipality. Bart’s law practice focuses primarily on hospitality law, and he represents numerous clients throughout the industry. Bart received his Law degree from Saint Louis University School of Law in 1996 and his Master’s degree in Urban Affairs from the Saint Louis University School of Public Policy and Urban Research that same year. He can be reached directly at bherriman@clarkquinnlaw.com.

The Iowa Program for Alcohol Compliance Training

Nicholas Cooper, Whitfield & Eddy, P.L.C.

The Iowa Alcoholic Beverages Division has introduced a free online education program that allows licensees to avoid civil prosecution in Iowa if they are cited for selling alcohol to a minor between the ages of 18 and 20.

The one hour education program is called the Iowa Program for Alcohol Compliance Training (“I-PACT”). I-PACT seeks to prevent underage sales through the training of current or prospective employees of on and off-premises licensees. The program educates participants about the key characteristics of current Iowa driver’s licenses, previous versions of Iowa driver’s licenses and other legal forms of identification. The program also covers the Iowa Alcoholic Beverage Control Act, legal confiscation of fake or altered IDs and teaches participants how to refuse the sale of alcohol with minimal confrontation.

Iowa laws on serving minors can have severe consequences to a licensee. By choosing to participate in I-PACT, your company will be eligible for an affirmative defense to civil prosecution if an employee sells alcohol to a minor. This defense can be used once in a four-year period and has two important legal benefits. First, your company will not be assessed a penalty. Second, the illegal sale will not be counted as a violation for purposes of determining the number of violations for which your company has been cited. To take advantage of the affirmative defense, the cited employee must have been I-PACT certified prior to the offense. However, the affirmative defense cannot be used if the employee sold to a minor under age 18. In addition, only the business is eligible to avoid a civil penalty; the guilty employee will still be subject to a criminal fine and their I-PACT certification will be revoked.

I am encouraging my liquor license clients to require their Iowa employees participate in this free program. The class is available at www.i-pact.com and takes about one hour to complete. At the end of the program, participants must complete a 20-question quiz. Upon successful completion of the course, the employee’s certification is valid for two years, at which point recertification will be available. Employers also have the ability to confirm online which employees have completed the training.

I would encourage all of you to contact me to learn more about I-PACT.



Nicholas Cooper is a partner with the law firm Whitfield & Eddy, P.L.C. in Des Moines, Iowa. For more information about I-PACT or any other issues regarding liquor licensing and compliance in Iowa, contact Nick at (515) 558-0180 or at cooper@whitfieldlaw.com.