

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division

MEMORANDUM

TO: Thea Davis
Assistant Attorney General
Alcoholic Beverage Regulation Administration

FROM: Wayne C. Witkowski *WCW*
Deputy Attorney General
Legal Counsel Division

DATE: January 12, 2010

SUBJECT: When Must the ABC Board Pull a Stipulated License?
(AL-09-837)

This memorandum responds to your request that this Division provide a legal opinion to the Alcoholic Beverage Regulation Administration (ABRA) regarding the exact date that the Alcoholic Beverage Control Board (Board) must pull a stipulated license from an applicant that has been issued under 23 DCMR § 200.1.¹

¹ 23 DCMR § 200.1 states:

200. STIPULATED LICENSES

200.1 The ABC Board will permit an applicant who has submitted a completed license application involving a Manufacturer's license, Wholesaler's license, or Retailer's license Class C or Class D to apply for a stipulated Manufacturer's license, Wholesaler's license, or Retailer's license Class C or Class D under the following conditions:

The applicant must be applying for or must hold a Manufacturer's license, Wholesaler's license, or Retailer's license Class C or Class D; and

The applicant must submit to the ABC Board written correspondence from an ANC officer where the applicant's premises is located stating that the ANC has voted with a quorum present not to object to the issuance of a stipulated license to the applicant pending completion of the 45-day protest period; and

The applicant must stop serving alcoholic beverages under the stipulated license if a valid protest is filed against the applicant during the 45-day protest period.

Conclusion

The validity of a protest should be determined at a roll call hearing before a stipulated license may be revoked. If ABRA determines that the protest is valid at the roll call hearing, the stipulated license may be revoked on that date, pending a determination on the merits of the protest.

Analysis

You mentioned in a memorandum to this office that:

[W]here the Board has approved an application for a stipulated license and ABRA has issued a stipulated license to the applicant, there are two possible interpretations the Board is considering regarding the cancellation of the stipulated license if a protest is filed against an application for a stipulated license.

One position is that the stipulated license should not be pulled from the applicant, if warranted, until at the roll call hearing. It has been a longstanding practice of ABRA to pull the stipulated license no sooner than the roll call hearing for a number of reasons. Mainly, ABRA does not seat a protestant until the roll call hearing. As such, ABRA does not give standing to a protestant under D.C. Official Code §25-601 and 23 DCMR §§1600-1602, constituting a valid protest, until the roll call hearing. It would be inefficient and premature to pull the stipulated license from an applicant only to reissue it if no valid protest exists (i.e., lack of standing, failure of protesting party to appear at the roll call hearing).

Another position is that a stipulated license must be pulled when a protest is received by ABRA. For example, if an applicant is issued a stipulated license, but a protest is filed with ABRA during the 45-day period, the argument is that ABRA should immediately pull the stipulated license from the applicant because a protest has been filed. The proponents of this position argue that this interpretation of the law is supported by the stated purpose of allowing stipulated licenses in uncontested cases. *See* D.C. Official Code § 25-431(c).

We concur that the procedure ABRA currently follows of validating a protest at a roll call hearing prior to revoking a stipulated license, is the more reasonable procedure of the two possible procedures you described. The plain language of the regulations indicates that the protest must be “valid” in order to trigger the revocation of a stipulated license. It does not appear that the mere filing of a protest would satisfy the validity requirement. Established principles of statutory interpretation dictate that every word of a particular law or rule should be given effect. When the language of a statute is plain and unambiguous, the plain meaning of that language is binding. *See Hudson Trail Outfitters v. D.C. Department of Employment Services*, 801 A.2d 987, 990 (D.C. 2002) (citation omitted); *James Parreco & Son v. D.C. Rental Housing Comm'n*, 567 A.2d 43, 45 (D.C. 1989).

The current procedure that ABRA uses to assess the validity of a protest filed against an applicant is consistent with basic tenets of procedural due process. After a protest is filed, ABRA determines the validity of the protest at the next roll call hearing by: 1) assessing whether the protest was timely filed; 2) determining that the protestant or a designated representative has appeared at the hearing, barring failure to appear for good cause; 3) assessing whether the protestant has legal standing; 4) assessing whether the protestant has raised legally permitted protest issues; and 5) reviewing any other issue that requires a decision by the Board. The roll call hearing is open to the public, and transcribed by a certified court reporter. See 23 DCMR 1602. This process establishes a public record of the protest and any action taken by the Board. Except in emergency situations, due process requires that when a State seeks to terminate a property or liberty interest,² it must afford notice and an opportunity for hearing appropriate to the nature of the case before the termination becomes effective. *See Bell v. Burson*, 402 U.S. 535, 542 (1971) (in context of a driver's license revocation, due process required only that the prerevocation hearing involve a probable-cause determination as to the fault of the licensee, noting that the hearing "need not take the form of a full adjudication of the question of liability"). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) cited in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

If you have any questions about this memorandum, please do not hesitate to contact Anne R. Hollander, Assistant Attorney General, Legal Counsel Division, at 724-5533, or me at 724-5524.

WCW/arh

² A stipulated license is a license granted pursuant to D.C. Official Code § 25-431(c), under the rulemaking provisions adopted in 23 DCMR 200.1. The stipulated license is a property right that a licensee is entitled to hold unless a "valid" protest is filed during the pendency of the full licensing hearing. *Ibid.*