



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

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FILE NO. 97-018

LICENSED OCCUPATIONS:
Stay of Liquor License Revocation

Honorable Gary W. Pack
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Pack:

I have your letter wherein you inquire regarding the interpretation of sections 7-5 and 7-9 of the Liquor Control Act of 1934 (235 ILCS 5/7-5, 5/7-9 (West 1996)). Specifically, you ask: (1) does the stay of a liquor license revocation expire when the State Liquor Control Commission affirms the local commissioner's decision at its first hearing, or does the stay remain in effect until the conclusion of the rehearing process? And (2) if a revocation is appealed to the State Liquor Control Commission, when does the one year waiting period commence for the purpose of granting a new license? For the reasons hereinafter stated, it is my opinion that the stay of a liquor license revocation does not terminate when the State Liquor Control

Honorable Gary W. Pack - 2.

Commission issues its decision, but continues in force until the conclusion of the rehearing process, if the licensee has submitted an application to the State Liquor Control Commission for rehearing. If no application has been filed, the stay terminates upon the expiration of the time allowed for filing an application for rehearing following the State Liquor Control Commission's decision. With respect to your second question, it is my opinion that the one year waiting period for issuance of a new license after revocation does not commence until the expiration of the aforementioned stay.

In response to your first inquiry, section 7-5 of the Liquor Control Act of 1934 (235 ILCS 5/7-5 (West 1996)) (hereinafter referred to as "the Act") provides, in pertinent part:

"The local liquor control commissioner may revoke or suspend any license issued by him if he determines that the licensee has violated any of the provisions of this Act or of any valid ordinance or resolution enacted by the particular city council, president, or board of trustees or county board (as the case may be) or any applicable rule or regulations established by the local liquor control commissioner or the State commission which is not inconsistent with law. * * *

However, no such license shall be so revoked or suspended and no licensee shall be fined except after a public hearing by the local liquor control commissioner with a 3 day written notice to the licensee affording the licensee an opportunity to appear and defend. * * *

The local liquor control commissioner shall within 5 days after such hearing, if he determines after such hearing that the li-

cense should be revoked or suspended or that the licensee should be fined, state the reason or reasons for such determination in a written order, and either the amount of the fine, the period of suspension, or that the license has been revoked, and shall serve a copy of such order within the 5 days upon the licensee.

If the premises for which the license was issued are located outside of a city, village or incorporated town having a population of 500,000 or more inhabitants, the licensee after the receipt of such order of suspension or revocation shall have the privilege within a period of 20 days after the receipt of such order of suspension or revocation of appealing the order to the State commission for a decision sustaining, reversing or modifying the order of the local liquor control commissioner. If the State commission affirms the local commissioner's order to suspend or revoke the license at the first hearing, the appellant shall cease to engage in the business for which the license was issued, until the local commissioner's order is terminated by its own provisions or reversed upon rehearing or by the courts.

* * *

"

(Emphasis added.)

Section 7-9 of the Act (235 ILCS 5/7-9 (West 1996)), which governs appeals to the State Liquor Control Commission (hereinafter referred to as "State Commission") of orders of local liquor commissioners, provides, in pertinent part:

"

* * *

In any case where a licensee appeals to the State Commission from an order or action of the local liquor control commission having the effect of suspending or revoking a license, denying a renewal application, or refusing to grant a license, the licensee

Honorable Gary W. Pack - 4.

shall resume the operation of the licensed business pending the decision of the State Commission and the expiration of the time allowed for an application for rehearing. If an application for rehearing is filed, the licensee shall continue the operation of the licensed business until the denial of the application or, if the rehearing is granted, until the decision on rehearing.

* * *

"

(Emphasis added.)

It is axiomatic that statutes which address the same subject matter are in pari materia and should be construed harmoniously and consistently insofar as is reasonably possible. (Martinez v. County of Stephenson (1995), 268 Ill. App. 3d 427, 430.) In construing these statutes, it should first be noted that neither of the provisions in question refers expressly to "stays" or the expiration thereof. For purposes of discussion, however, the term "stay" will be used to indicate those periods during which the effect of a local order is suspended and the business may continue in operation.

Under section 7-5, a licensee is granted the right to appeal an adverse decision of the local liquor commission within 20 days to the State Commission. A reading of section 7-5 in isolation could lead to the conclusion that, if an appeal is taken, the licensee may continue to operate only until the affirmance of the local commissioner's order at the State Commission's first hearing, at which time it must cease operations

Honorable Gary W. Pack - 5.

until the local commission's order expires or is reversed upon rehearing or by judicial proceedings.

Section 7-9 provides, however, that during the appeal of the local order to the State Commission, the licensee may resume business operations "pending the decision of the State Commission and the expiration of the time allowed for an application for rehearing" (emphasis added). Under section 7-9, therefore, a stay of the local order is granted during the appeal process not only until the affirmance of the local order by the State Commission, but also through the next stage of the appeal process in which the licensee may appeal the State Commission's decision by filing an application for rehearing. The use of the conjunction "and" in the phrase "pending the decision of the State Commission and the expiration of the time allowed" for a rehearing application compels this conclusion. The length of this extended stay depends upon whether or not an application for rehearing is, in fact, filed. If an application is filed, the licensee is permitted to continue business operations until the denial of the application or, if a rehearing is granted, until the decision on rehearing is issued. Furthermore, this stay of the State Commission's decision until the time for filing an application for rehearing concludes is automatic even if no application is ultimately submitted by the licensee.

Therefore, it is my opinion that the stay granted under section 7-9 of the Liquor Control Act of 1934 to a licensee, who

Honorable Gary W. Pack - 6.

appeals a decision of the local liquor commissioner to the State Commission, expires when the time allowed for filing an application for rehearing of the State Commission's decision is exhausted, if no application for rehearing is filed. If, however, an application for rehearing is filed, it is my opinion that the stay provided for in section 7-9 of the Act continues until either the application is denied or, if a rehearing is granted, the decision on rehearing is rendered.

In response to your second question, section 7-13 of the Act (235 ILCS 5/7-13 (West 1996)), which governs the waiting period for granting licenses after revocation, provides, in pertinent part:

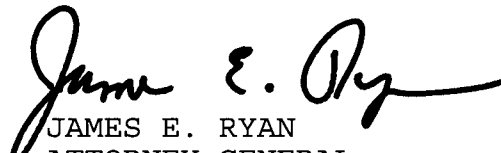
"* * * When any license shall have been revoked for any cause, no license shall be granted to any person for the period of one year thereafter for the conduct of the business of manufacturing, distributing, or selling alcoholic liquor in the premises described in the revoked license unless the revocation order has been vacated or unless the revocation order was entered as to the licensee only."

Under section 7-13, once a license has been revoked, there is a one year waiting period before a new license may be obtained. This one year period ordinarily begins on the date of revocation. Because the enforcement of the local order of revocation is stayed if the order of revocation is appealed to the State Commission, however, the one year waiting period for a new license must necessarily be deferred until the appeal process

Honorable Gary W. Pack - 7.

is completed. To conclude otherwise would subvert the purpose of the revocation. Accordingly, it is my opinion that in such cases, the one year revocation period begins when the time allowed for an application for rehearing of the State Commission's decision has expired; if the licensee has not submitted an application for rehearing. If an application for rehearing has been filed, then the one year waiting period will commence upon either the date of the denial of the application, or, if a rehearing is granted, the date of the decision on rehearing.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL