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FILE NO. S-1101

LIQUORS:
Eligibility of County
Board Member to Have
Interest in Retail
Liquor Outlet.

Honorable John G. Satter
State's Attorney
Livingston County
Pontiac, Illinois 61764

Dear Mr. Satter:

I have your letter in which you request an opinion regarding a certain class of persons ineligible to receive a liquor license from either the Illinois Liquor Control Commission or any local liquor control commission. Your concern is with the fourteenth class of ineligible persons listed in section 2, article VI of "AN ACT relating to alcoholic liquors" (Ill. Rev. Stat. 1975, ch. 43, par. 120),

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which prohibits certain governmental officials from being issued a liquor license or having any other interest in the dispensation of alcohol. The language of this clause has recently been amended by P.A. 79-1183, effective July 1, 1976. Your inquiry is whether the language of the fourteenth clause of section 2, article VI of the Act, as now amended, prohibits a county board member from owning or having an interest in a retail liquor outlet wherever located. By way of focusing the inquiry, you state:

"The key word in the amendment to paragraph 14 is 'jurisdiction'. Does this refer to the general jurisdiction of the county itself, or does it mean the ability of the county to regulate liquor licenses?"

Prior to being amended, the fourteenth clause of section 2, article VI of "AN ACT relating to alcoholic liquors", supra, provided:

"§ 2. No license of any kind issued by the State Commission or any local commission shall be issued to:

* * *

(14) Any law enforcing public official, any mayor, alderman, or member of the city council or commis-

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sion, any president of the village board of trustees, any member of a village board of trustees, or any president or member of a county board; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor;

* * *

An addition to the text of this clause was provided by P.A. 79-1183 (H.B. 416), which was approved on December 19, 1975 and becomes effective July 1, 1976. As amended, the fourteenth clause now provides:

"§ 2. No license of any kind issued by the State Commission or any local commission shall be issued to:

* * *

(14) Any law enforcing public official, including members of local liquor control commissions, any mayor, alderman, or member of the city council or commission, any president of the village board of trustees, any member of a village board of trustees, or any president or member of a county board; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor, except that license may be granted to such official in relation to premises which are not located within the territory subject to the jurisdiction of that official if the issuance of such license is approved by the State Liquor Control Commission;

* * *

(emphasis added.)

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It is presumed that an amendment of a statute is made to effect some purpose, and that effect must be given the law amended in a manner consistent with the amendment.

(People v. McCoy, 63 Ill. 2d 40, 45; Acme Fireworks Corp. v. Bibb, 6 Ill. 2d 112, 117.) Thus, in view of the amendment of the fourteenth clause, some modification of the position taken in opinions issued previous to the enactment of P.A. 79-1183 is necessary.

The consideration involved in your question devolves upon whether the word "jurisdiction", as used in the amendment to the fourteenth clause, is to be construed narrowly or broadly. The difficulty in determining exactly what is intended by the phrase "the jurisdiction of that official", in reference to a county board member, arises because the jurisdiction of the county board is somewhat limited as regards its function as a local liquor control commission. The authority of the county board to regulate the licensing of retail sales in liquor is limited to territory outside the limits of any city, village or incorporated town within such county. A county board's jurisdiction over liquor regulation

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is established by section 1, article IV of the Act (Ill. Rev. Stat. 1975, ch. 43, par. 110), which provides:

"In every city, village or incorporated town, the city council or president and board of trustees, and in counties in respect of territory outside the limits of any such city, village or incorporated town the county board shall have the power by general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with this Act and the amount of the local licensee fees to be paid for the various kinds of licenses to be issued in their political subdivision, * * *." (emphasis added.)

Thus, the inquiry becomes whether the exception to ineligibility for licensure recently incorporated into the fourteenth clause should be construed, as regards a county board member, to mean that such member is eligible for a retail license in relation to premises only outside the general jurisdiction of a county board, i.e., the entire county; or, under a more narrow construction, only outside the jurisdiction which the county board has in regard to liquor regulation, i.e., territory in the county outside municipalities.

In construing an amendment, the apparent motive for making changes in the statute should be considered (People v. Com'rs. of Highways, 270 Ill. 141), as well as the objects

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to be attained by the legislation or the evils to be remedied. (Barrow v. Lence, 17 Ill. App. 2d 527.) The first canon of statutory interpretation is to ascertain and give effect to the legislative intent as expressed in the statute. (People ex rel. Kucharski v. Adams, 48 Ill. 2d 540, 543.) It is of course true that the words used in a statute should be given their plain and commonly accepted meaning, but "[w]here the spirit and intent of the General Assembly in adopting an act are clearly expressed and its objects and purposes are clearly set forth, courts are not bound by the literal language of a particular clause which would defeat the obvious intent of the legislature". Continental Illinois National Bank & Trust Co. v. Illinois State Toll Highway Com., 42 Ill. 2d 385, 395. It is thus necessary to make inquiry into the object and purpose of section 2, article VI of the Act, and the fourteenth clause thereof, in order to ascertain the effect which the legislature intended the recent amendment to have.

It is clear that the fourteenth clause of section 2, article VI of the Act evidences an intent of the legislature

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to prevent, among others, a member of a local liquor control commission, like a county board member, from being so interested in the manufacture, distribution or sale of alcoholic liquor that such official cannot give to the public the impartial and faithful service which he is duty bound to render and which the public has every right to demand and receive. This section indicates a determination to protect the welfare of the people and to insure that the county board member, as member of a liquor regulating agency, will not only render absolutely impartial service, but also to prevent any appearance or aura of conflict of interest or impropriety. See, Opinion No. S-604, 1973 Ill. Att'y. Gen. Op. 113.

An earlier opinion (1937 Ill. Att'y. Gen. Op. 111) also considered the legislative purpose of the fourteenth clause of section 2, article VI of the Act, as follows:

" * * * [I]f a license to sell alcoholic liquors were issued as contemplated in your letter, such official would be interested, either directly or indirectly, in the sale of alcoholic liquor. I think the reasons apparent why the legislature wrote this into the law, and that it was an endeavor to correct an old and abused order of things in this state, which in part resulted in prohibition being formerly adopted; that there be a present

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endeavor to divorce liquor from politics and so regulate the traffic that those who have to do with the administration and enforcement of the law shall not be interested in the business, and if the business of manufacturing, selling and distributing alcoholic liquors is to be retained, observance of the above statute and all like regulatory provisions must prevail." (emphasis added.)

In view of the foregoing, it is my opinion that the conflict of interest sought to be prevented, in rendering such as a county board member ineligible for a liquor license, is that conflict between his duties solely under article IV of the Act and any private pecuniary interests. The clear object of the separation of regulatory power and private interest would relate to a county board member's duties solely as a member of a local liquor control commission, as set out under section 1, article IV, quoted hereinabove. Thus, the phrase "jurisdiction of that official" refers only to the territory over which the official possesses authority for the control of liquor licensing and regulation. A county board is empowered to regulate the territory in the county outside the limits of any city, village or incorporated town. Thus, the jurisdiction of a county board member with regard to liquor regulation would be the territory of his

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county outside any city, village or incorporated town therein.

This interpretation is further supported by considering the use of the word "jurisdiction" elsewhere within "AN ACT relating to alcoholic liquors". (Ill. Rev. Stat. 1975, ch. 43, pars. 94 et seq.) In construing a statute to ascertain the intention of the legislature, the statute should be construed in its entirety. (S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56.) The various parts, provisions or sections of a statute must be read and considered together (Huckaba v. Cox, 14 Ill. 2d 126), so as to make it harmonious and consistent in all its parts. (People ex rel. Roan v. Wilson, 405 Ill. 122.) It is therefore instructive to look at several other closely related provisions of the Act using the concept of "jurisdiction" similarly.

Section 2, article IV of the Act (Ill. Rev. Stat. 1975, ch. 43, par. 111) provides, in part:

" * * * [T]he president or chairman of the county board, shall be the local liquor control commissioner for their * * * counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of

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this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted; but the authority of the president or chairman of the county board shall extend only to that area in any county which lies outside the corporate limits of the cities, villages and incorporated towns therein * * * (emphasis added.)

Section 3, article IV of the Act (Ill. Rev. Stat. 1975, ch. 43, par. 112) provides, in part:

"Each local liquor control commissioner shall also have the following powers, functions and duties with respect to licenses, * * * .

1. To grant and or suspend for not more than thirty days or revoke for cause all local licenses issued to persons for premises within his jurisdiction;

* * *

3. To receive complaint from any citizen within his jurisdiction that any of the provisions of this Act, or any rules or regulations adopted pursuant hereto, have been or are being violated and to act upon such complaints in the manner hereinafter provided;" (emphasis added.)

Thus, elsewhere in the Act, the term "jurisdiction" is used narrowly to mean that territory under the regulation of an official in his capacity as regards liquor control only.

It is therefore my opinion that after July 1, 1976 a county board member is eligible for a retail liquor license in relation to premises which are not located within the

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territory subject to the jurisdiction of the board of which he is a member, that is, territory within the county, but outside any city, village or incorporated town therein. A county board member may have no other interest, direct or indirect, in the manufacture, sale or distribution of alcoholic liquor.

Very truly yours,

A T T O R N E Y G E N E R A L