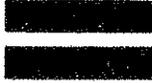


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division



MEMORANDUM

TO: Fred P. Moosally
General Counsel
Alcoholic Beverage Regulation Administration

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

DATE: October 17, 2008

SUBJECT: Is the Alcoholic Beverage Control Board Required to Accept a Request From a Licensee to Cancel a License That has Been Suspended and That is the Subject of Pending Enforcement Action in Order to Moot the Enforcement Action?
(AL-08-782) (MID 240611)

This responds to your October 15, 2008 memorandum by which you submitted the question, stated above, to this Office for legal advice. My response and analysis follows.

QUESTION

Is the Alcoholic Beverage Control Board (Board) required to acquiesce in a request from a licensee to cancel a license that has been suspended and that is the subject of a pending enforcement action in order to moot the pending enforcement action ?

RESPONSE

No. Since the statutes affecting the Board and the Alcoholic Beverage Regulation Administration (ABRA) must be read as a whole and the Board must comply with all of its statutory mandates, the Board cannot be required to acquiesce in a request to cancel a license under these circumstances.

BACKGROUND

You state, in your memorandum to me, that the Respondent, who is the subject of a show cause enforcement hearing before the Board, currently holds a suspended Retailer's Class CN license. The suspension is the result of a series of enforcement violations. The show cause hearing is scheduled for October 22, 2008.

An October 10, 2008 letter from counsel for the Respondent states:

The licensee has abandoned efforts to resume business under the subject license. Accordingly, and pursuant to D.C. Official Code § 25-791 (e), the subject license, which is in summary suspension status, is to be marked as “cancelled”.

Cancellation of the subject license moots all pending matters.

ANALYSIS

D.C. Official Code § 25-791 (e) (2008 Supp.) (hereafter, ABRA Statute), upon which the Respondent relies, states:

(e) If a licensee notifies the Board that the licensee has ceased to do business under the license or if the Board cancels the license under this section, the license shall be marked as “canceled”.¹

However, the ABRA Statute is part of a statutory section (*i.e.*, D.C. Official Code § 25-791) (2008 Supp.)), that concerns the voluntary discontinuance of a license for safekeeping when the licensee has determined that it must temporarily cease to use the license for unspecified business reasons. The section has nothing to do with licenses that are involuntarily surrendered to the Board due to a disciplinary action such as a suspension. Thus, on its face it does not appear that the ABRA Statute can be used by the Respondent in the context of a suspended license that is the subject of a show cause hearing that could possibly lead to revocation of the license.²

Furthermore, as you have stated in your memorandum, if the Board were to agree to cancel the Respondent’s license, all pending enforcement actions would become moot. As you also state, if the Board accepted Respondent’s request to cancel its license, the Board would effectively surrender any future ability it would have, were it to vote to revoke the license, to prevent the Respondent from being issued a license for another location for five years following the revocation.³

¹ There may be information in the legislative history of the ABRA Statute that further explains the intent of this statute. Since you were involved in the preparation of all of the statutes now codified in Title 25 of the D.C. Official Code and the accompanying Council hearings, you should probably review that history to see if there is an additional explanation.

² Of course, the Board has broad discretion to implement the provisions of D.C. Official Code § 25-101 *et seq.* (2001). Therefore, if there were ever a situation in which the Board desired to cancel a license under D.C. Official Code § 25-197 (2008 Supp.), notwithstanding a pending enforcement action, there does not appear to be any statutory prohibition against the Board, in its discretion, taking that course of action.

³ D.C. Official Code § 25-821 (c) (2001).

I agree with your statement, in your memorandum, that there is nothing in the recitation of the Board's official functions, set forth in D.C. Official Code § 25-201 (c) (2008 Supp.), that requires the Board to acquiesce to the Respondent's request. However, D.C. Official Code § 25-201 (c) (6) and (7) (2008 Supp.) do require ABRA to:

- (6) Conduct investigations, on its own initiative or on the basis of valid complaints, to identify violations of this title or regulations issued under this title;
- (7) Suspend or revoke licenses and impose civil fines as authorized by this title and regulations issued under this title;

As you know, there is a well established principle of statutory construction that statutory provisions, such as all of the statutes in Title 25 of the D.C. Official Code, must be harmonized and construed so that each statute is given effect and so that no statute is rendered inoperative or superfluous.⁴ Thus, even if the ABRA Statute permitted Respondent's request, and I believe it does not, it cannot be read in isolation. It must be read as part of the comprehensive statutory scheme controlling the Board and ABRA. The ABRA Statute cannot be read in such a way that the Board's mandatory responsibilities, such as those described above in D.C. Official Code § 25-201 (c) (6) and (7) (2008 Supp.), are rendered superfluous. It also cannot be read in such a way as to trivialize the Board's enforcement proceedings or to effectively eliminate the Board's authority to revoke a license, if it finds such action to be warranted following an appropriate hearing. To adopt such a reading would violate the additional rule of statutory construction that literal language of a statute should not be enforced, if the enforcement would lead to absurd results.⁵ Thus, I conclude that the Board is not required to acquiesce in Respondent's request.

Should you have questions regarding this memorandum, please contact either Pollie H. Goff, Senior Assistant Attorney General, Legal Counsel Division, at 724-5558, or me at 724-5524.

WCW/phg

⁴ 2A Sutherland, *Statutory Construction*, § 46.06 at 181-192 (6th ed.) 2000 Revision.

⁵ *District of Columbia National Bank v. District of Columbia*, 348 F.2d 808, 810 (D.C. Cir. 1965); *Tibbs v. United States*, 507 A.2d 141, 143 (D.C. 1986).