

CITY OF MILWAUKEE

Form CA-43

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December 2, 2003

Ronald D. Leonhardt
City Clerk
City Hall, Room 205

Re: The legality and enforceability of § 90-7-3 MCO requiring that a corporation which changes its officers or directors shall file a new application and pay a new fee as if it were making an original application

Dear Mr. Leonhardt:

You have presented us with the following situation.

A corporation currently licensed with an alcohol-beverage license has had one of the two stockholders making up the corporation purchase the shares of stock of the other, and replaced the corporate agent with the now sole holder of all the corporate shares of stock. As this was done, the individual who had been president of the corporation had his interest bought out by the vice president. The former vice president is now sole owner, president, and agent. You point out that under the provisions of § 90-7-3 of the Milwaukee Code of Ordinances ("MCO"), as a result of this change the corporation must file a new original application for an alcohol-beverage license. Section 90-7-3, MCO, provides:

CHANGE OF OFFICERS. Whenever a corporation licensed to sell intoxicating liquor or fermented malt beverages changes any of its corporate officers or directors, the corporation shall file a new application and pay the required fee as if it were making an original application. This subsection shall not apply to hotels or duly organized fraternal organizations nor when a change in the corporate setup is necessitated because of the death of such officers or directors.

Wis. Stat. § 125.04(6) provides:

LICENSES TO CORPORATIONS AND LIMITED LIABILITY COMPANIES;
APPOINTMENT OF AGENTS. (a) *Agent*. No corporation or limited liability company organized under the laws of this state or of any other state or foreign country may be issued any alcohol beverage license or permit unless:

1. The entity first appoints an agent in the manner prescribed by the authority issuing the license or permit. In addition to the qualifications under sub. (5), the agent must, with respect to character, record, and reputation, be satisfactory to the issuing authority.

2. The entity vests in the agent, by properly authorized and executed written delegation, full authority and control of the premises described in the license or permit of the entity, and of the conduct of all business on the premises relative to alcohol beverages, that the licensee or permittee could have and exercise if it were a natural person.

(b) *Successor agent*. A corporation or limited liability company may cancel the appointment of an agent and appoint a successor agent to act in the agent's place, for the remainder of the license year or until another agent is appointed, as follows:

1. The successor agent shall meet the same qualifications required of the first appointed agent.

2. The entity shall immediately notify the issuing authority, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment.

(c) *Authority of successor*. A successor agent shall have all the authority, perform all the functions and be charged with all the duties of the previous agent of the corporation or limited liability company until the next regular or special meeting of the issuing authority if a license is held. However, the license of the corporation or limited liability company shall cease to be in force if, prior to the next regular or special meeting of the issuing authority, the clerk of the licensing authority receives notice of disapproval of the successor agent by a peace officer of the municipality issuing the license.

(d) *Approval of successor*. The license of the corporation or limited liability company shall not be in force after the next regular or special meeting of the licensing authority unless and until the successor agent or another qualified agent is appointed and approved by the licensing authority.

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(e) *Fee.* The corporation or limited liability company shall, following the approval of each successor agent or another qualified agent by the licensing authority, pay to the licensing authority a fee of \$10.

(f) *Resignation.* If an agent appointed under this subsection resigns, he or she shall notify in writing the corporation or limited liability company and the authority issuing the license or permit within 48 hours of the resignation.

Additionally, Wis. Stat. § 125.10(1) provides:

125.10 Municipal regulation. (1) AUTHORIZATION. Any municipality may enact regulations incorporating any part of this chapter and may prescribe additional regulations for the same of alcohol beverages, **not in conflict with this chapter.** The municipality may prescribe forfeitures or license suspension or revocation for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance. [Emphasis added]

We note at the outset that nothing in Wis. Stat. § 125.04(6) even remotely suggests that the alcohol-beverage license of a corporation ceases to be in full force and effect when there is a change of agent, officers or directors. We note that the only possible exception to that general rule is contained in § 125.04(6)(d) in the event the licensing authority does not approve a successor agent, but under no other circumstances.

We also note that under the provisions of § 180.0203 of the Wisconsin Statutes, "The corporate existence begins when the articles of incorporation become effective under s. 180.0123 . . ." The corporate existence does not cease until there is ". . . a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation." (Wis. Stat. § 180.0203(1) and (2)). Indeed, we note that corporations usually continue in perpetuity unless and until they are somehow dissolved.

In addition, subchapter VIII of Chapter 180 of the Wisconsin Statutes sets forth a detailed and systematic approach to the issue of dealing with resignation or removal of directors and corporate officers. The entire concept of subchapter VIII of Chapter 180 is that the corporate existence continues to remain viable even in the face of the resignation, removal or death of corporate officers and directors.


Turning again to Chapter 125, there are essentially two means by which an alcohol-beverage license ends. One is the expiration of the one-year licensing period (§ 125.04(11)), or the non-renewal or revocation of an existing alcohol-beverage license (§ 125.12).

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Nothing in Chapter 125 causes the expiration of an existing alcohol-beverage license granted to a corporation except the refusal of the Common Council to assent to the appointment of a new corporate agent under the provisions of § 125.04(6)(b).

Accordingly, we believe that the provisions of § 90-7-3 are in excess of and consequently inconsistent with the purposes of Chapter 125 and are therefore not lawful under the provisions of Wis. Stat. § 125.10(1).

Very truly yours,



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BDS:wt

c: Jim Copeland, License Division Manager
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