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December 20, 2001

To the Honorable  
The Common Council  
of the City of Milwaukee  
Room 205 - City Hall

Re: Your Request For an Opinion as to Legality and Enforceability of a Proposed Action of The Milwaukee Common Council to Approve a Class "B" Tavern and Tavern Amusement (Cabaret) License for Marvin Berg III as Agent for "Utopia, Inc." for the Premises at 162 West Wisconsin Avenue, in the City and County of Milwaukee, Wisconsin ("Pure")

Dear Council Members:

We are given to understand that Marvin Berg III as agent for Utopia, Inc. seeks a Class "B" Tavern and Tavern Amusement (Cabaret) License for the premises at 162 West Wisconsin Avenue in the City and County of Milwaukee, Wisconsin ("Pure"). Mr. Berg has also entered into a lease with Mr. Eugene Posner, a partner in Caswell Investments to operate a retail-clothing store at the same premises wherein the Class "B" Tavern and Tavern Amusement (Cabaret) License will be operating. Ostensibly the plan is to operate a clothing store at this premises except during the hours of operation of the tavern which would be following the closing of the clothing store on Thursday, Friday, and Saturday evenings. During those hours the premise is to be operated as a Class "B" tavern with cabaret entertainment. You have provided us a copy of a December 19, 2001 letter wherein the agreement between Mr. Berg and Mr. Posner is memorialized. You request an opinion as to whether or not the Council may validly grant the license in question at this premises.

We have had an opportunity to examine Section 125.32(3m), which provides as follows:

**LIMITATIONS ON OTHER BUSINESS: Class "B" PREMISES**

No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:

- a) A hotel.
- b) A restaurant, whether or not it is a part of or located in any mercantile establishment.
- c) A combination grocery store and tavern.
- d) A combination sporting goods store and tavern in towns, villages and 4<sup>th</sup> class cities.
- e) A combination novelty store and tavern.
- f) A bowling center or recreation premises.
- g) A club, society or lodge that has been in existence for 6 months or more prior to the date of filing application for the Class "B" license or permit.


Further, no facts provided indicate that any of the aforementioned exceptions are applicable. A search of Chapter 125 of the Wisconsin Statutes does not reveal any ability for premises to be designated as a Class "B" premises for only certain hours. Simply put, our reading of Chapter 125 demonstrates that once a premises is designated as a Class "B" premises, it operates as such a premises during the term of the license which, under Section 125.04(11)(b) is one year following date of grant by the Milwaukee Common Council.


We believe that Section 125.32 (3m) is clear. No business other than the seven enumerated exceptions, may be operated on the same premises as a Class "B" premises.

We also remind you of the provisions of Section 125.04(2) which provides,

**“(2) LICENSES OR PERMITS ISSUED IN VIOLATION OF THIS CHAPTER. No license or permit may be issued to any person except as provided in this chapter. Any license or permit issued in violation of this chapter is void. (Emphasis applied).**

Very truly yours,

  
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GRANT F. LANGLEY  
City Attorney

  
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BRUCE SCHRIMPF  
Assistant City Attorney

BDS/ml:48543