



445 East Capitol Avenue
Pierre, South Dakota 57501-3185
Phone: 605-773-3311
Fax: 605-773-5129

February 7, 2013

Mike Derby
Canyon Lake Chophouse
2720 Chapel Lane
Rapid City, S.D. 57702

RE: Liquor License Question

Dear Mr. Derby:

Representative Conzet recently forwarded an email to me which asked for a written response from the Department of Revenue (Department). Attached to the email was a legal opinion from Robert L. Lewis. I didn't see anything in the legal opinion asking for a specific response but I'll attempt to explain the Department's interpretation of the applicable statutes.

As I understand the facts, you wish to sell your retail on-sale liquor license and obtain retail on/off-sale wine and malt beverage licenses. Additionally, you wish to allow the sale of distilled spirits on your premises by eligible organizations pursuant to South Dakota Codified Law (SDCL) 35-4-124. This practice would create multiple on-sale licensees at the same licensed premises.

I agree there is nothing in Title 35 that specifically prohibits having multiple on-sale licensees at the same licensed premises. Likewise, there is nothing that specifically authorizes it. Due to the highly regulated nature of alcohol, the Department typically relies on SDCL 35-1-4.

35-1-4. No person may produce, transport, store, or sell any alcoholic beverage except as authorized under the provisions of this title.

Since multiple on-sale licensees at the same licensed premises is not specifically authorized in Title 35, it is the Department's position that it is not allowable.

Furthermore, SDCL 35-1-5.6 states that any alcohol consumed at a licensed premises must have been purchased from the on-sale licensee.

35-1-5.6. It is a Class 2 misdemeanor for any person to consume any alcoholic beverage upon the premises of a licensed on-sale dealer if the alcoholic beverage was not purchased from the on-sale dealer.

A temporary on-sale liquor license obtained by an eligible organization would not supersede or otherwise suspend the on-sale wine and malt beverage licenses already issued to Canyon Lake Chophouse. If there are two on-sale licensees on the same licensed premises during a special

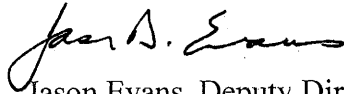
event, a person could argue that any alcohol purchased on the licensed premises was purchased from the on-sale licensee. Likewise, a person could argue that any alcohol purchased on the licensed premises was not purchased from the other on-sale licensee. This is very problematic, causing the Department to take the position that it is not allowable to have multiple on-sale licensees at the same licensed premises.

Finally, it appears contrary to legislative intent to allow the holder of an on-sale liquor license to benefit financially by selling it, then obtaining cheaper on-sale wine and malt beverage licenses while continuing to allow the sale of distilled spirits on the premises pursuant to the provisions of SDCL 35-4-124. If this practice is allowable it will negate the requirement for any licensee to obtain an on-sale liquor license. They could simply arrange an eligible applicant to obtain a temporary liquor license whenever they desired to sell distilled spirits on the licensed premises.

The sale and consumption of alcohol is a highly regulated matter in South Dakota. If you choose not to acquire any on-sale alcohol licensing for your premises, the Department would not have the above referenced concerns about an eligible organization obtaining a temporary license. However, if you wish to pursue the idea of having multiple on-sale licensees at the same licensed premises, you will need to seek legislative authorization.

Feel free to contact me if you have further questions.

Sincerely,



Jason Evans, Deputy Director
Property and Special Taxes Division
South Dakota Department of Revenue

cc: Representative Kristin Conzet