

Preemption Doctrine & the Alcoholic Beverage Control Law

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Alcoholic Beverage Control Law enacted at end of Prohibition in 1934

- 21st Amendment grants all 50 states primary jurisdiction to regulate the alcoholic beverage industry within their borders.
- Alcoholic Beverage Control Law (“ABCL”) was intended to regulate what was at one time considered a vast criminal enterprise with pervasive political influence.
- ABCL has been amended repeatedly but never truly overhauled since.

Preemption Doctrine enshrined in Article 9 of the New York State Constitution

- “(c) In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, **except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government....**” [NY CLS Const, art IX, §2(c)] (Emphasis mine.)

People v. De Jesus, 54 N.Y.2d 465 (1981)

- Invalidated Rochester City ordinance prohibiting persons from patronizing any establishment selling alcoholic beverages after 2:00 am. [People v. De Jesus 54 N.Y.2d at 472].
- Extended Preemption Doctrine for the first time to the ABCCL, stating that regulatory system set up thereby is “both comprehensive and detailed....” [People v. De Jesus, at 469].
- Set up exceptions to the Preemption Doctrine for local laws of general application, such as requiring smoke alarms in all businesses, forbidding dumping of refuse, or prohibiting disorderliness at any public place. [People v. De Jesus at 472].

Lansdown Entertainment Corp. v. NYC
Dep't of Consumer Affairs, 74 N.Y.2d
761 (1989)

- Struck down NYC Cabaret License requirement that cabarets needed to be closed between the hours of 4:00 am and 8:00 am because ABCL Sec. 106(5)(b) allows for on-premises sales until 4:00 am and consumption on the premises until 4:30 am. [Lansdown v. NYC Dep't of Consumer Affairs, 74 N.Y.2d at 761].
- NYC statute made illegal what the state statute specifically allows and the “legislative history does not indicate a specific intent to exercise a legitimate local function such as maintaining the peace and quiet of residential neighborhoods...” [Lansdown, 74 N.Y.2d at 761].

DJL Rest. Corp. v. NYC, 96 N.Y.2d 91 (2001).

- Court of Appeals upheld NYC zoning ordinance governing adult entertainment establishments finding that local law “applies not to the regulation of alcohol but to the locales of adult establishments irrespective of whether they dispense alcoholic beverages.” [DJL Rest. Corp. v. City of New York, 96 N.Y.2d at 97].
- “A liquor licensee wishing to provide adult entertainment must do so in a location authorized by the AZR- not because it is selling liquor, but because it is providing adult entertainment. Conversely, if an adult establishment wishes to sell liquor, it must obtain a liquor license and comply with the ABC Law. That the ABC Law and the AZR have some overlapping requirements is merely peripheral and involves no more than...a zoning ordinance’s inevitable exertion of some incidental control over a particular business.” [DJL Rest. Corp. v. City of New York, 96 N.Y.2d at 97, 98].

Local Option under the ABCCL

- Municipal notification of at least 30 days prior to filing of application with the Authority is required for all applicants for on-premises retail licenses. [ABCCL Sec. 110-b(1)(a).]
- County-wide resolutions further limiting permissible hours of sale. [ABCCL §17(9)].
- Local option votes to become “dry” or “partially dry.” [ABCCL Art. 9].

Municipal Notifications for Applicants

- Municipal notification of at least 30 days prior to filing of application with the Authority is required for all applicants for on-premises retail licenses. [ABCL Sec. 110-b(1)(a).]
- In NYC prior municipal notification is also required for renewal applications, alteration applications, or substantial corporate changes. [ABCL §§110-b(1)(b), 110-b(1)(c), and 110-b(1)(d)].
- 30 Day notifications must be provided to town clerks and provide local municipalities with the opportunity to advise the Authority of any objections they may have to issuance of a license to the applicant or at that particular location.

Any questions?

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