

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 12/06/2017  
REFERRED FROM: SECRETARY'S OFFICE

2017- 02613

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

REVIEW OF DRAFT WRITTEN DECISIONS FROM PRIOR FULL BOARD MEETINGS

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 12/06/2017 determined:



# State Liquor Authority

**ANDREW M. CUOMO**  
Governor

**VINCENT G. BRADLEY**  
Chairman

**GREELEY FORD**  
Commissioner

To: Members of the Authority  
From: Thomas J. Donohue, Secretary to the Authority  
Date: November 28, 2017  
Subject: Draft Decisions from prior Full Board meetings

Attached for your consideration and review, please find draft decisions for the matters set forth below. Subject to any corrections you direct, I request that you approve same at the December 6, 2017.

2017-00874/ Kings L 1300387  
2017-01189/ Albany L 2206601  
2017-02071/ Saratoga L 2208615

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 12/06/2017  
REFERRED FROM: COUNSEL'S OFFICE

2017- 02665

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

PROPOSED CHANGES TO CHARITABLE  
DONATIONS ADVISORY

Proposed changes in bold face italics

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 12/06/2017 determined:



# State Liquor Authority

ANDREW M. CUOMO  
Governor

VINCENT G. BRADLEY  
Chairman

GREELEY FORD  
Commissioner

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## ADVISORY # 2017-x

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To: Manufacturers, importers, wholesalers, and retailers  
Subject: Donations of alcoholic beverages to charitable and/or not-for-profit organizations

The purpose of this Advisory is to provide guidance to industry members with respect to donations of alcoholic beverages to charitable and/or not-for-profit organizations. For purposes of this advisory, the terms "charitable organization," "not-for-profit organization" and "non-profit organization" shall have the same meaning- any bona fide religious or charitable organization or bona fide educational, fraternal or service organization or bona fide organization of veterans or volunteer firefighters, provided the donations to such organization are deductible for Federal income tax purposes. ***This Advisory replaces Advisory #2015-5.***

### Donations to not-for-profit organizations for off-premises sales

Section 99-a of the Alcoholic Beverage Control Law allows the Authority to issue a one day permit (a "charitable permit") to a not-for-profit organization to sell alcoholic beverages for off-premises consumption. Typically these charitable permits are used for auctions but can be used for any type of retail sale. The charitable permit is subject to five conditions: 1) contributions made by an individual donor must be deductible for federal income tax purposes; 2) the funds raised by the sale of alcoholic beverages are used for the organization's non-profit purposes; 3) all the alcoholic beverages are in sealed containers; 4) not more than eighty cases of alcoholic beverages can be sold; and 5) the sales take place during the hours that a retail off-premises licensee in that county can legally sell the alcoholic beverage. Licensees may donate alcoholic beverages to a not-for-profit organization holding a charitable permit.

### Donations to not-for-profit organizations for on-premises consumption

There are three ways a not-for-profit organization can sell/serve alcoholic beverages for on-premises consumption: at an event with a temporary beer and wine permit; at its own premises with its own on-premises license; and at an event catered by a business with its own on-premises license, either at the licensee's location or at another site with a caterer's permit.

- Not-for-profit organization holding a temporary beer and wine permit

Donations of alcoholic beverages to charitable and/or not-for-profit organizations

A not-for-profit organization can obtain a one day permit under section 97 to sell beer, wine and cider at an indoor or outdoor event. Licensees may donate alcoholic beverages to a not-for-profit organization holding such a permit.

- Not –for-profit organization holding an on-premises license

**Except as provided below, no donations of alcoholic beverages may be made to a not-for-profit that holds its own on-premises license. Such donations by a manufacturer, importer or wholesaler would be considered a violation of the gifts and services law and, with respect to liquor and wine, a violation of the price posting law. As a licensed retailer, the not-for-profit may not accept alcoholic beverages from another retailer.**

**Donations of alcoholic beverages may be made to a not-for-profit organization that holds its own on-premises license for up to six (6) specific events per calendar year under the following conditions: 1) the event is conducted by and for the benefit of the not-for-profit organization; 2) attendees at the event are not separately charged for the alcoholic beverages (the event must be an “open bar”); and 3) any donated alcoholic beverages remaining after the event must be removed by (or returned to) the licensee that made the donation.**

- Not-for-profit conducting an event catered by another on-premises licensee

Licensees may donate alcoholic beverages to a not-for-profit organization that is holding an event that is being catered by an on-premises licensee other than the not-for-profit organization. This is the case whether the event takes place at the retailer’s licensed premises or at an unlicensed location when the retailer has obtained a caterer’s permit. The alcoholic beverages may be delivered to the retail to be held on behalf of the not-for-profit until the event is held. Any alcoholic beverages remaining after the event must be removed by the not-for-profit or the entity that made the donation.

Donations are only permitted if attendees at the event are not charged for the alcoholic beverages (an “open bar”, for example). If the retailer is going to charge attendees for alcoholic beverages (a “cash bar”, for example), the retailer must purchase the alcoholic beverages from a duly authorized licensed wholesaler or manufacturer and may not share profits from such sales with the not-for-profit organization.

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This matter was heard and determined by the Members of the Authority at a Full Board meeting held on December 6, 2017 before Chairman Vincent Bradley and Commissioner Greeley Ford. This written advisory was approved by the Members of the Authority at a Full Board meeting held on December 6, 2017 before Chairman Vincent Bradley and Commissioner Greeley Ford.

Dated:

Thomas J. Donohue  
Secretary to the Authority

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 12/06/2017  
REFERRED FROM: COUNSEL'S OFFICE

2017- 02673

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY  
RULING- APPLICATION OF 200' LAW  
ON 41-43 DIVISION STREET,  
MANHATTAN

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 12/06/2017 determined:



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October 30, 2017

RECEIVED

NY State Liquor Authority

NOV 01 2017

Albany, NY  
Counsel's Office

By Federal Express

New York State Liquor Authority  
Office of Counsel  
Alfred E. Smith Office Building  
80 South Swan Street, Suite 900  
Albany, New York 12210-8002

Attn.: Mark. D. Frering, Esq.

Re: Request for a Declaratory Ruling  
200 Foot Law - 40 Division Street, New York, New York

Dear Mr. Frering:

We represent the owner of a vacant 7-story building located at 41-43 Division Street, New York, New York (the "Premises"). Our client intends to renovate and develop the Premises for use as a hotel or another hospitality-based business, either of which would depend upon the grant of a retail liquor license.

We are writing to request a declaratory ruling pursuant to Section 98.1 of the Rules of the New York State Liquor Authority that the grant of a liquor license for the Premises, or a portion thereof, would not violate Alcoholic Beverage Control Law ("ABCL") § 64(7)(a), commonly known as the 200 Foot Law. Specifically, this is a request for a determination that the building located at 40 Division Street, New York, New York is not occupied exclusively as a school.

Applicable Law & Precedent

The 200 Foot Law is contained in ABCL § 64(7)(a), as well as in other sections of the ABCL governing on-premises liquor licenses, and provides that no on-premises liquor license shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building *occupied exclusively* as a school.

ABCL § 64(7)(d-1) provides for certain uses which are considered incidental so as not to detract from a building's characterization as exclusively occupied as a *place of worship*.

Request for Declaratory Ruling  
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Although the ABCL is silent as to whether or not those same uses (or other uses) would disqualify a building's characterization as exclusively occupied as a school, the Authority's Division Order #319 provides that the discretion of the Authority is to be exercised in such a manner as to give the fullest scope of protection of the law to a school *so long as the non-educational activities bear a logical relationship to the educational purpose of the institution*. See also the Authority's Declaratory Ruling 2016-00220. Thus, if the building in which the school is located has another non-academic use then the building does not count for 200 Foot Law purposes.

Accordingly, in 111 East 22nd Management Corp. v. NYSLA, 152 Misc. 2d 841 (1991), the court held that a building was not exclusively occupied as a school where, in addition to housing a school, the building was used for dental and medical clinics, adult day training and vocational workshop, an adult rehabilitation center, an in-house print shop, adult day services administration, and an outside vendor technology resource center. The court found the school to be one of many activities conducted in a multiuse facility and thus would not bar the issuance of a liquor license to a premises within 200 feet.

In determining whether a building is occupied exclusively as a school, the 200 Foot Law also considers whether the building in which the school is located is internally connected to any other building or structure. If two buildings or structures are internally connected then the two are considered one building or structure for 200 Foot Law purposes. That is, even if a building is used exclusively as a school, if that building is internally connected to another building that has uses or occupancies unrelated to the school's academic purposes then the entire structure is considered as one building which would not be considered as "occupied exclusively as a school" for 200 Foot Law purposes. There is ample support for this conclusion.

The definition of "building containing licensed premises" as set forth in ABCL § 3(7) states that it "shall include the licensed premises and also any part of the building in which such premises is contained and any part of any other building connected with such building by direct access or by a common entrance." Therefore, by extension, a building containing a school for 200 Foot Law purposes includes any part of any other building connected with the school or by direct access or by a common entrance.

The internal access of one structure to another was also the basis for the Authority's finding that a building was not exclusively used as a place of worship in its Declaratory Ruling 2011-03310. In that case, a church and a new high-rise residential condominium building (which were clearly two separate structures) were adjacent and connected by an interior passageway and that interior connection was sufficient to render the two buildings as one single building for 200 Foot Law purposes.

Further authority for finding that two internally connected structures are to be considered as one building is Matter of Coco's Roller Rink v. NYSLA, 92 A.D.2d 487 (1983), a case which involved a church consisting of three interconnected structures and which had non-religious activities that contaminated the characterization of the entire structure as being exclusively used as a place of worship. Although the buildings had separate front entrances, separate addresses, separate listing in a real estate directory, were separately taxed, and were



Request for Declaratory Ruling  
October 30, 2017 | Page 3

constructed of different brick, the court ruled that, because the buildings shared an interior passageway, there was insufficient evidence to support a finding that the structures were separate.

The law is well settled that a building which contains a school as well as another unrelated or commercial use that has no relationship to the school's academic purposes or a school building that is internally connected to another building which has commercial or other uses unrelated to the school's educational activities is not considered *a building exclusively occupied as a school* for 200 Foot Law purposes.

*The Premises and the Multiuse Complex Containing the Schools*

The Premises are located on the south side of Division Street, between Catherine Street and Market Street in lower Manhattan. The Premises are within a C6-1G zoning district which permits, as of right, its use as a hotel or eating and drinking establishment. The buildings adjacent to the Premises are used entirely for commercial or industrial purposes, and the buildings behind the Premises and those located further away on the block are similarly used or are mixed commercial/residential buildings.

On the north side of Division Street is a massive complex, known as Confucius Plaza, which occupies a property lot of 247,567 square feet bounded by The Bowery, Division Street, and the Manhattan Bridge/Manhattan Bridge Pedestrian Path (the "Complex").

The Complex encompasses (and its tenants use) a number of different addresses including 40 Division Street, 1-29 Bowery, 33-43 Bowery, and 10 Confucius Plaza, but all addresses go to the same property lot (Block 289, Lot 1), and all are under the same tax lot. A map from the New York City Department of Finance showing the Complex's single block and lot number as well as its single tax payer status is annexed hereto as Exhibit "A".

The Complex is described as and appears to be a single, multiuse building consisting of a 44-story tower with more than 760 residential apartments, numerous commercial offices and retail businesses, a commercial parking garage, and the Yung Wing Public School, P.S. 124 and the Transfiguration School's Early Childhood Campus, a pre-school (collectively, the "Schools").<sup>1</sup>

A Google map of the Complex showing the respective locations of the Schools and the many commercial and retail businesses located within the Complex, including Confucius Pharmacy, Enzo Clinical Laboratories, a piano store, a photo studio, Enterprise CarShare, and a

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<sup>1</sup> Although the Authority's Divisional Order No. 176 does not include pre-schools within the definition of "school" and it is our understanding that the Authority has historically interpreted the definition of "school" to exclude pre-schools, for the purposes of this declaratory ruling we do not object if the Authority were to consider the Transfiguration School's Early Childhood Campus a "school," as it is within the same multiuse Complex as P.S. 124. Additionally, we wish to note that the Chinatown Day Care Center is located at 35-37 Division Street (which we presume to be within 200 feet of the Premises) but, and again pursuant to Divisional Order No. 176 and the Authority's interpretation of the definition of "school," a day care center is irrelevant for 200 Foot Law purposes as it is not a school.

Request for Declaratory Ruling  
October 30, 2017 | Page 4

commercial parking facility (discussed in more detail below), among other uses is annexed hereto as Exhibit "B".

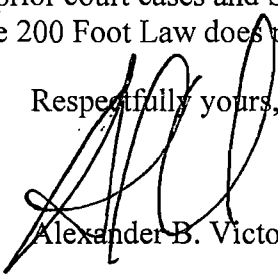
Additionally, annexed hereto as Exhibit "C" are (i) images and photographs of the 44-story residential tower, P.S. 124, and the various commercial tenants within the Complex, as well as a photograph of the Complex's posted directory to many of those commercial and retail tenants; and (ii) photographs of the Complex (taken from the Premises) as well as satellite images from Google showing the Complex as one uniform structure.

These photographs and images visibly show the Complex to be one seamlessly integrated and constructed multiuse structure. The Complex has also consistently been represented and treated as a single, mixed-use structure: various news and real estate publications refer to the Complex as a multiuse property containing or including the Schools, residential apartments, and various commercial uses. Those publications are annexed hereto as Exhibit "D".

Perhaps most compelling is that there is even an unrelated commercial use, a parking facility operated by Champion Confucius LLC (an entity affiliated with Champion Parking), within the same portion of the Complex (and directly underneath) where P.S. 124 is located. While the residential apartments and commercial uses are on the other side of the Complex, this commercial business is adjacent to P.S. 124 and is clearly owned and operated independently as its own business unrelated to the school's academic purposes -- we were told that there is not even a discount offered to faculty or parents of students. Annexed hereto as Exhibit "E" are (i) photographs and images clearly showing the parking facility in and underneath the same portion of the Complex as P.S. 124, as well as the parking facility's commercial rates, and (ii) information about this commercial parking facility from the Champion Parking's website, together with a printout from the Department of State, Division of Corporations' website showing Champion Confucius LLC as an active New York limited liability company. In addition to this demonstrated commercial and non-academic related use, my client (who took many of the photographs and images) was told by employees of Champion Parking that the garage was internally connected to the Complex's residential tower.<sup>2</sup>

Based upon all of the foregoing documentation and information which establishes the Complex as one multiuse building and in light of prior court cases and SLA determinations, we respectfully request that the Authority find that the 200 Foot Law does not apply to the Complex.

Respectfully yours,

  
Alexander B. Victor

Enclosures

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<sup>2</sup> My client attempted to access this internal passageway but was denied as he was not a tenant and not an employee or contractor performing services for the Complex.

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 12/06/2017  
REFERRED FROM: COUNSEL'S OFFICE

2017- 02674

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY  
RULING- DOUBLE ELL ONLINE GIFT  
CERTIFICATES

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 12/06/2017 determined:

THE LAW OFFICE OF  
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September 8, 2017

**Sent by email to Anna.Lajoie@SLA.NY.GOV and  
Mark.Frering@sla.ny.gov**

New York State Liquor Authority  
317 Lenox Avenue  
New York, New York 10027

Attn: Anna Lajoie, Esq. and Mark Frering, Esq.

Re: Double Ell Corp.

Dear Ms. Lajoie and Mr. Frering:

As you are aware, I am the attorney for Double Ell Corp., a new corporation intending to conduct an online business in the below described format. This correspondence is a supplement to my February 28, 2017 and March 17, 2017 correspondence, revising the business model for Double Ell Corp. and requesting that your office provide a declaratory ruling as to whether or not Double Ell Corp. will require an alcohol or liquor license, and if so, the form of license required. To the extent the below description of Double Ell Corp.'s operation differs from that described in my February 28, 2017 and March 17, 2017 correspondence, the description provided below shall prevail.

As previously indicated, Double Ell Corp. would like to set up a website offering the sale of gift certificates to purchase two drinks (either alcoholic or non-alcoholic) at a restaurant or bar which is participating in Double Ell Corp.'s gift certificate program. The cost of the gift certificate shall be twenty dollars plus sales tax, where Double Ell Corp. shall retain a flat fee of two dollars per gift certificate.

The purchaser of the gift certificate (the grantor) will give the gift certificate to someone else (the grantee) who may utilize the gift certificate at a restaurant or bar which is participating in Double Ell Corp.'s program. The gift certificate will be in the form of a paper hard copy and/or an image on a mobile device. The grantee of the gift certificate may redeem the gift certificate at its face value to purchase

drinks (either alcoholic or non-alcoholic) at the participating restaurant or bar.

There are certain aspects of the Double Ell Corp. gift certificate program which I would like to highlight for you.

1. In the event the gift certificate is not redeemed at a participating restaurant or bar within one year from the date of the purchase of the gift certificate, Double Ell Corp. will retain the two dollars it had intended to retain in the event the gift certificate had been redeemed during that same one year period and refund to the grantor the remaining portion paid for the gift certificate.
2. Double Ell Corp. will not control the selection of alcoholic beverages sold by the participating restaurant or bar or the pricing of alcoholic beverages sold by the participating establishment.
3. Double Ell Corp. will inform the user of its website that both the purchaser of the gift certificate and the grantee of the gift certificate must each be twenty-one years of age or older.
4. The participating restaurant or bar has the right to make certain that the user of the gift certificate is at least twenty-one years of age or older.
5. It is expected that the participating restaurant or bar's revenues from Double Ell Corp.'s gift certificate program will be a very small percentage of the total revenues of the participating establishment.

As to the payment logistics for the Double Ell Corp. gift certificate, the purchaser of the gift certificate shall pay the twenty dollar face amount of the gift certificate directly to Double Ell Corp., whereupon Double Ell Corp. will retain its two dollar flat fee and remit the remaining eighteen dollars paid for the gift certificate to the participating restaurant or bar, once it is determined which establishment the grantee of the gift certificate has utilized the gift certificate to purchase a drink. In the event the gift certificate is not redeemed at a restaurant or bar within one year from the date of its purchase, Double Ell Corp. will retain the two dollars of the gift certificate it initially intended to retain and refund to the purchaser of the gift certificate the remaining eighteen dollars amount paid for the gift certificate. In this

New York State Liquor Authority  
September 8, 2017  
Page 3

manner, Double Ell Corp. will never earn more than two dollars per gift certificate sold to its customers.

I would appreciate your office issuing a declaratory ruling indicating whether or not Double Ell Corp. requires any alcohol or liquor license, and if so, what license must be obtained by Double Ell Corp. in order to operate in the manner described above.

Your courtesies and cooperation are herein are appreciated.

Very truly yours,

Paul J. Israelson

PJI:kc

cc: Ms. Lorin Leonard

LTR1\Leonard - SLA -Third request for declaratory ruling

NEW YORK STATE LIQUOR AUTHORITY  
FULL BOARD AGENDA  
MEETING OF 12/06/2017  
REFERRED FROM: COUNSEL'S OFFICE

2017- 02675

REASON FOR REFERRAL  
REQUEST FOR DIRECTION

REQUEST FOR DECLARATORY  
RULING- TABLE SERVICE  
REQUIREMENT FOR MOVIE  
THEATRES

The Members of the Authority at their regular meeting held at the Zone I New York City Office on 12/06/2017 determined:



# SHENKER RUSSO & CLARK LLP

Theresa M. Russo  
[Theresa.Russo@srclawoffices.com](mailto:Theresa.Russo@srclawoffices.com)  
518.407.5800

Christopher Riano, Esq.  
General Counsel  
New York State Liquor Authority  
317 Lenox Avenue  
New York, NY 10027

Re: Declaratory Ruling Regarding Interpretation of Alcohol & Beverage Control Law Section 3.27

Dear Mr. Riano:

Our firm represents Regal Cinemas, a movie theater organization that proposes to serve food and alcoholic beverages to its patrons at locations where such theaters qualify as "restaurants" under Alcohol & Beverage Control Law ("ABC Law") Section 3.27. Under that provision of the law, the term "restaurant" includes movie theaters where *all seating is at tables where meals are served*. Our client is seeking a declaratory ruling regarding whether the italicized language requires that wait staff/movie theater employees take customer orders and serve the alcoholic beverages and food items to patrons only while physically seated at tables in the theater auditoriums or whether this language also permits a food service model whereby patrons can order and be served meals and beverages at the concession stands for consumption at tables inside the theater auditoriums.

#### Proposed Method of Operation

Regal proposes to allow patrons to order meals and alcoholic beverages at the concession points of sale and service outside the theater auditoriums for ultimate consumption at seats equipped with tables inside the auditoriums. Patrons would be able to bring their meals and alcoholic beverages to their seats and tables for consumption. Meals and alcoholic beverages will be served in this manner for consumption in all theater auditoriums. All auditorium seats would be equipped with tables that are a suitable size to accommodate a meal and beverage. In following its nationwide compliance standards, Regal will require that appropriate identification be required for purchase of alcoholic beverages at the point of sale. Employees would be trained in responsible sale and service guidelines and will only permit that one alcoholic drink be served per person presenting identification per transaction.

Regal's proposed model furthers its compliance policies as serving food and drinks at the concession stand allows employees the opportunity of a complete face to face transaction to ensure patrons are age 21 or older and not intoxicated. As a standard practice, Regal employees also patrol theater auditoriums to supervise alcohol consumption no less than every 30 minutes during any movie showing.



Finally, Regal's proposal is aligned and consistent with past Opinion's and declaratory rulings, as further expanded upon below.

August 2, 2016 Counsel's Opinion

With respect to the issue at hand, we note that an August 2, 2016 Opinion of Counsel concluded that it was not necessary for theater employed wait staff to actually serve movie patrons while seated at the tables in order for the movie theater to satisfy the definition of "restaurant" under Section 3.27. In making this determination, counsel relied upon Declaratory Ruling 2014-02992G. In that Ruling, the Authority considered whether the tables proposed to be purchased by the owner of a movie theater would satisfy the requirements for "tables" under Section 3.27. The Authority found that such tables were sufficient to qualify under this definition without making any reference to the need for wait staff. Counsel for the Authority, we believe correctly, concluded that the Authority would have mentioned the wait staff requirement if such was necessary.

Declaratory Ruling 2012-09138

In this Ruling, the Authority considered the question of whether AMC Entertainment, Inc. would satisfy the italicized language above by having cafeteria style ordering outside the theater and tables inside the theater. In permitting AMC Entertainment Inc. customers to order food and alcohol outside the theater and have entrees delivered to the patrons inside the theater, the Authority made clear that it is not necessary for theater employed wait staff to take orders from patrons inside the theater and that it was permissible for customers to take their own alcoholic beverages to their own seats.

With regard to the delivery of food items to patrons inside the theater, we respectfully request that the Authority consider whether this element is necessary in order to meet the definition of a restaurant. In this regard, we note that the Authority issues on premises liquor licenses to cafeteria-type establishments where patrons order their food and alcoholic beverages in a line and then bring those items to their table for consumption. In order to meet the definition of a restaurant, Regal does not believe that the statute requires movie theater employees to physically deliver meals and beverages to the patrons while seated in the theater auditoriums any more than the statute requires a cafeteria to have meals delivered to the tables within their establishment for it to qualify as a restaurant.

Thank you for your consideration. Please feel free to contact me if you need any further information.

Very truly yours



Theresa M. Russo