

(Series 1976)
Divisional Order #720
November 9, 1976
(Supersedes Div. Order #701
of March 8, 1976)

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: Zone Offices and Local Boards

SUBJECT: Advertising by Licensed Clubs

The Authority continues to receive from restaurant and tavern trade associations and others, newspaper advertisements and similar public announcements advertising functions to be held on licensed club premises. Such advertising is prima facie evidence of an anticipated violation of the provisions of the Alcoholic Beverage Control Law requiring that club licensees sell alcoholic beverages only to their members and guests accompanying them (Section 106.8).

Formerly, it was not the Authority's policy to bring to the attention of the club licensee the anticipated violation of law, even if we had been made aware of such anticipated violation well before the date on which the event was scheduled to occur. Instead, we had been permitting the event to take place, after which we investigated and, where appropriate, instituted disciplinary proceedings.

Many club licensees are unaware that they are violating the law by advertising and conducting events open to the public. Therefore, in order to minimize such violations, and to save the Authority the time and expense involved in investigation and disciplinary proceedings, the Authority, by Divisional Order #701 dated March 8, 1976, directed specific procedural action. These procedures have been amended and now require as follows:

1. Where the Authority or any local board becomes aware, before the event, that a club licensee is advertising an affair open to the public, such licensee shall promptly be warned that the advertisement and the holding of the affair may constitute violations of the Alcoholic Beverage Control Law, subjecting the club licensee to disciplinary proceedings.

Where time permits, such warning shall be given by mail. A suggested form of letter (Exhibit A) is attached. In other circumstances, such notice shall be given by telephone and a record made thereof. No further action shall be taken except as specified in paragraph 3 hereof.

2. Where the Authority becomes aware, after the event, that an advertised affair has been held, the club licensee should be notified by letter that such advertised affair may have constituted a violation of the Alcoholic Beverage Control Law. A suggested form of notification letter (Exhibit B) is attached. No further action shall be taken except as specified in paragraph 3 hereof.
3. If the Authority receives convincing evidence in the form of a written statement signed by a non-member of a club, stating that the club has held an affair, that he attended the affair at the club premises, that he purchased alcoholic beverages (specifying details), that he was not a member or a guest of a member on this occasion and that he agrees to testify to such facts as the Authority's witness at a hearing, then, upon receipt of such statement, the following action shall be taken:

Where the club has received a letter of warning or suspension for sales to non-members within the past five calendar years (present year included), disciplinary proceedings shall be instituted. The warning letter (Exhibit A) directed in paragraph 1 hereof is deemed a letter of warning for such purpose. The notification letter (Exhibit B) directed by paragraph 2 is not a letter of warning for such purpose.

In all other instances, a letter of warning shall be sent.

4. When completed disciplinary proceedings are brought before the Members of the Authority, the hearing officer's report should indicate whether or not the club was warned, in advance of the affair, that the affair could constitute a violation of the law.

5. Where the advertisement relates to an unlicensed club, the complaint should be forwarded to the police authorities for appropriate attention and the complainant so notified.

STATE LIQUOR AUTHORITY



MICHAEL ROTH
Chairman

EXHIBIT A

Dear _____:

It has come to our attention that you are advertising an affair, on your premises, for (insert date), which is to be open to the public.

This is to advise you that such advertising, and the public affair if held in accordance therewith, may constitute a violation of the Alcoholic Beverage Control law. Any such violation could subject you to disciplinary proceedings, including possible loss of the license and bond claim.

We are confident that you do not wish to violate the law and we are, therefore, bringing this matter to your attention.

Yours very truly,

EXHIBIT B

LETTER OF NOTIFICATION

Dear _____:

The Authority has received information that on _____, you held an advertised affair, open to the public, on your club premises.

Such advertising, and the public affair held in accordance therewith, may have constituted a violation of the Alcoholic Beverage Control Law which restricts the sale of alcoholic beverages by a licensed club only to the club members and to their guests accompanying them.

Very truly yours,