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## DECLARATORY RULING

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Movie Theatres – Beer and Wine License

Agenda # 2022-0210

### **Introduction**

The State Liquor Authority (SLA) has received a request for a declaratory ruling on behalf of the National Association of Movie Theatre Owners. The letter requests a Declaratory Ruling on whether the NYS Alcoholic Beverage Control Law (ABCL) allows motion picture theatres in New York to obtain licenses to sell wine, beer and cider.

### **Question Presented**

Do motion picture theatres qualify for a wine license in New York under ABCL § 81 if they prepare and serve food for consumption on the premises, and the sale of wine is incidental to and not the prime source of revenue from the operation of the premises?

### **Statutes Involved**

ABCL § 81(1) provides “The procedure set forth in section sixty-four hereof shall apply so far as applicable to applications for licenses to sell wine at retail for consumption on the premises, *except as provided in subdivision two of this section.*” [emphasis added]

ABCL § 81(2) states “No such license shall be issued to any person for any premises other than premises for which a license may be issued under section sixty-four of this chapter or a hotel ***or premises which are kept, used, maintained, advertised or held out to the public to be a place where food is prepared and served for consumption on the premises in such quantities as to satisfy the liquor authority that the sale of wine is incidental to and not the prime source of revenue from the operation of such premises.***”

### **Analysis**

The New York State Liquor Authority has historically interpreted ABCL §§ 81 and 81-a, which concern licenses to sell wine, beer and cider, as mirroring ABCL §§ 64 and 64-a, for restaurants and taverns respectively. Most movie theatres are not able to meet the operational

requirements applicable to restaurants, which include table service, a full kitchen, a chef, etc. However, ABCL § 81(1) provides an exception to the procedures of ABCL § 64 when the criteria of ABCL § 81(2) is met. Movie theatres are intrinsically different than restaurants and taverns, where the source of revenue is limited to the sale of food and drink. The primary source of revenue for movie theatres is likely to be the sale of tickets to see movies, so the sale of wine, beer, cider, or mead is most likely to be incidental to that. If one parses the language of ABCL § 81(2), a movie theatre that prepares and serves food for on-premises consumption may generally qualify for a wine license when the sale of wine is incidental to the primary source of revenue from the operation of the premises, which, for movie theatres, is expected to be the sale of movie tickets.

The law does require the SLA to be satisfied that the sale of wine will, indeed, be incidental to other business. Accordingly, to meet the terms of ABCL § 81(2), an applicant will be required to present facts, in its application for a license, that satisfy the SLA that it is a movie theater that will prepare and serve food, indicating the type of food, and that its primary source of revenue is from movie ticket sales and/or snacks, with the revenue from the sale of alcoholic beverages being incidental.


**Determination**

The Members declare that movie theatres may apply for and obtain wine, beer, cider, and mead licenses under ABCL § 81. Issuance of the license will be conditioned upon the SLA finding that the applicant meets the terms of ABCL § 81(2).

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This matter was heard and determined by the Members of the Authority at a Full Board meeting held on January 19, 2022 before Chairman Vincent Bradley, Commissioner Lily Fan, and Commissioner Ford. The above written decision was approved by Chairman Bradley on behalf of the Members of the Authority on January 26, 2022.

Dated: 1/26/22

  
Donald R. Roper  
Secretary to the Authority