

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
PASTORE COMPLEX  
1511 PONTIAC AVENUE  
CRANSTON, RHODE ISLAND

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M&M Food Service, LLC d/b/a Millonzi  
Fine Catering  
Appellant,

v.

City of Providence, Board of Licenses,  
Appellee.

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DBR No.: 16LQ

**ORDER**

**I. INTRODUCTION**

M&M Food Service, LLC d/b/a Millonzi Fine Catering (“Appellant”) filed an appeal with the Director of the Department of Business Regulation (“Department”) of the Providence Board of Licenses’ (“Board”) decision regarding the service of alcohol. Pursuant to R.I. Gen. Laws § 3-7-14.2, the Department is authorized to issue a caterer’s license entitled as a Class P license. See Rule 42 of *Commercial Licensing Regulation & Liquor Control Administration*. The Appellant holds a Class P license. The Appellant requested a stay of the limits imposed on service of alcohol for events to be held at 62 Dike Street (“Premises”) on November 18 and 19, 2016. A hearing on this request was held on November 18, 2016 before the undersigned.<sup>1</sup>

**II. JURISDICTION**

R.I. Gen. Laws § 3-7-21 allow petitioners for certain liquor licenses issued by towns and cities to appeal to the Department decisions by a town or city related to the granting, transfer, suspension, or revocation of liquor license. The Board does not issue the Class P liquor license.

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<sup>1</sup> Pursuant to a delegation of authority by the Director of the Department issued on November 10, 2016.

However, the Department has broad and comprehensive control over the traffic in alcohol. Indeed, the Department's power of review is so broad that it has been referred to as a "state superlicensing board." *Baginski v. Alcoholic Beverage Comm'n.*, 4 A.2d 265, 267 (R.I. 1939). Because of this broad authority to enforce Title 3, the Department may review matters on appeal pursuant to its authority under R.I. Gen. Laws § 3-2-2<sup>2</sup> rather than R.I. Gen. Laws § 3-7-21.

The Department exercises its authority under R.I. Gen. Laws § 3-2-2 when the matter rises to a level that impacts its broad authority over statewide licensing. For example, the Superior Court in *City of Providence Bd. of Licenses v. State Department of Business Regulation*, 2006 WL 1073419 (R.I. Super.), upheld the Department's authority to hear a matter on appeal pursuant to the Department's *sua sponte* authority under R.I. Gen. Laws § 3-2-2. See also *Volare, Inc. d/b/a Barry's v. City of Warwick Board of Public Safety*, LCA-WA-95-01 (7/17/95).

### III. DISCUSSION

The Appellant argued that the Board had imposed restrictions upon its Class P license by limiting the service of alcohol to only prior to 1:00 a.m. tonight and tomorrow at the Premises. The Appellant argued those restrictions are beyond the authority of the Board which is limited by R.I. Gen. Laws § 5-24-1 over which businesses it has authority to limit hours. The Appellant agreed that the Board would have authority to condition service of alcohol by a late night licensee

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<sup>2</sup> R.I. Gen. Laws § 3-2-2 provides as follows:

Supervision. – (a) The department has general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting, keeping for sale, and selling beverages.

(b) The department may lease a warehouse for the purpose of efficiently exercising its powers and duties of inspection and may upon reasonable charges store beverages for license holders in the warehouse. No lease shall be for a longer period than five (5) years and every lease shall contain the provision that if it becomes unlawful to manufacture, keep for sale, and to sell beverages in this state it shall become void.

(c) The department has the power at any time to issue, renew, revoke and cancel all manufacturers', wholesalers' and retailers' Class G licenses and permits as are provided for by this title.

(d) The department shall supervise and inspect all licensed places to enforce the provisions of this title and the conditions, rules and regulations which the department establishes and authorizes.

or entertainment licensee, but argued that in this matter the Board did not do this but rather limited alcohol sales by the caterer.

The Board and the City argued that it has not restricted the caterer, but rather imposed a condition on the late night licenseholder at the Premises. The Board argued that the late night licenseholder had been called in for review of its 1:00 a.m. to 4:00 a.m. late night license (late night licenses are issued by the Board under the City Ordinance) and the Board had restricted its late night license to no service of alcohol after 1:00 a.m. The Board argued that the Appellant had not been before the Board and no order was issued by the Board in relation to the Appellant.

The parties all raised the issue of whether a caterer's license may serve alcohol after 1:00 a.m. The Appellant argued that the statute and regulation only limit a caterer to serving alcohol no more than five (5) hours in a day. The Board and City argued that to allow a caterer to serve alcohol after 1:00 a.m. when except for a BVX license, there are no other late night liquor licenses in the state would lead to absurd results such as a venue hiring back-to-back caterers to have alcohol served from 10:00 p.m. to 8:00 a.m. The Appellant argued that restricting caterers to 1:00 a.m. would impact parties where a homeowner has hired a caterer for an in-house party. The Appellant argued that this should be addressed by statute or regulation. The parties also sought the Department's guidance. The Board argued that whether a caterer could serve past 1:00 a.m. or not, it was irrelevant in this matter as the late night license had been restricted. The City also argued that the caterer's license was statutorily derived from a Class F license which is statutory limited to 1:00 a.m. The Appellant argued that since the legislature knows how to impose a time limit and did not then the caterer's license is not limited like a Class F.

The Board does not have authority over the Class P license as that license is issued by the Department. Appeals to the Department pursuant to R.I. Gen. Laws § 3-7-21 or pursuant to R.I. Gen. Laws § 3-2-2 only relate to the liquor licenses held by an appellant. See *El Nido v. Goldstein*, 626

A.2d 239 (R.I. 1993) (victualing license is a separate and distinct license from a liquor license). Licenseholders have other avenues of appeal for its other licenses. The Rhode Island Supreme Court has held that when a town council acts in a quasi-judicial manner and does not provide for a right of appeal, the proper avenue for appeal is *writ of certiorari* to the Rhode Island Supreme Court. *Cullen v. Town Council of Town of Lincoln*, 893 A.2d 239 (R.I. 2000); and *Eastern Scrap Services, Inc. v. Harty*, 341 A.2d 718 (R.I. 1975).


Based on the forgoing, the Department finds that the Board does not have the authority to limit a Class P license as that is within the purview of the Department. However, the Department has no authority to address any limits imposed by the Board on the late night held by the licensee of the Premises. To the extent that the Board restricted the late night license to no service of alcohol after 1:00 a.m., the Department has no authority to hear such a claim and the Appellant is not that licenseholder.

#### IV. RECOMMENDATION

The Department finds that any action against the Class P license is beyond the authority of the Board so any such action taken by the Board is stayed. However, the Board argued that it had not taken action against the Class P license but rather had conditioned the late night license so that alcohol could not be served on the premises after 1:00 a.m. Any action taken against the late night license is beyond the authority of the Department.

The Department is not ruling on the issue of how late can a caterer serve alcohol. Such a determination is not necessary at this time and could be made at a full hearing.

Dated: 11/18/16

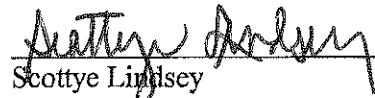
  
Catherine R. Warren  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 11/18/16

  
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Scottye Lindsey  
Director

**A hearing, if needed, will be scheduled by the parties.**

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER IS REVIEWABLE BY THE SUPERIOR COURT PURSUANT TO R.I. GEN. LAWS § 42-35-15(a) WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF A PETITION DOES NOT STAY ENFORCEMENT OF THIS ORDER.**

**CERTIFICATION**

I hereby certify on this 18<sup>th</sup> day of November, 2016 that a copy of the within order was sent by first class mail, postage prepaid and by electronic mail to Nicholas Hemond, Esquire, DarrowEverett, LLP, One Turks Head Place, Providence, RI 02903, Mario Martone, Esquire, City of Providence Law Department, 444 Westminster Street, Suite 220, Providence, RI 02903, and Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by hand delivery to Maria D'Allesandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Bldg. 68-69, Cranston, RI 02920.

  
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