



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LIQUOR CONTROL COMMISSION

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In the matter of the request of)
MGM Grand Detroit, L.L.C,)
for a declaratory ruling regarding the legality)
of a tabletop self-tap dispensing device)
under Mich Admin R 436.1045(4).)
_____)

At the November 27, 2012, meeting of the Michigan Liquor Control Commission
in Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman
Teri L. Quimby, Commissioner
Dennis Olshove, Commissioner

DECLARATORY RULING

MGM Grand Detroit, L.L.C., (MGM), seeks a declaratory ruling from the Commission concerning whether a proposed tabletop “self-tap” dispensing device at an MGM restaurant is banned by Mich Admin R 436.1045(4). After we issued an order granting MGM’s request for a declaratory ruling, MGM submitted additional materials for our review, which we have considered in issuing this ruling.

I. Facts Presented

MGM wants to install a tabletop self-tap system at one of its restaurants, “Tap.” MGM represents, through its counsel, that the proposed system consists of a draft beer tap affixed at tables that would be equipped to dispense two brands of beer. MGM contends that the system would be nonfunctional unless activated by MGM staff.

Patrons at a table would have to inform the server that they want to use the system, and the server would then ascertain the ages of the patrons and ensure that all customers at the table are at least 21 years old and are not intoxicated. The server would then receive payment for the beer that would be dispensed and ask the bar manager to remotely activate the computerized system. MGM would determine the amount of beer to be dispensed to the patrons, and a meter on the table-top unit would display that amount. MGM anticipates that the preset amount would be 2 pints per patron. If the patrons dispense the entire preset amount of beer, the system automatically shuts off, and the patrons must again ask MGM staff to use the system. MGM further indicates that when patrons request re-activation, the servers will again monitor the patrons for signs of intoxication and confirm that any new arrivals to the table are at least 21 years old. The patrons must pay each time the bar manager reactivates the self-tap system, and information concerning the transactions and the amount of beer dispensed would be recorded on the system's software. Additional explanation about the system can be found on the system manufacturer's website, <http://www.ellicksonusa.com/fixd-tables.php>.

II. Applicable Law

Rule 436.1045(4) states:

A licensee shall not allow, on the licensed premises, any vending machine, whether or not operated by coin or currency, that dispenses a type of alcoholic liquor directly to a customer. This subrule does not apply to a dispensing machine, which is commonly known as an "in-room bar device", whether or not operated by coin or currency, and which is located in the bedrooms or suites of licensed hotels.

In interpreting this rule, the Commission must implement Michigan law regarding the principles of statutory construction. These rules apply with equal force when construing an administrative rule. See *Great Wolf Lodge of Traverse City, LLC v Public*

Service Commission, 489 Mich 27, 37 (2011). The primary goal of statutory construction is to “give effect to the intent of the [Commission].” *Alvin Motor Freight, Inc v Dep’t of Treasury*, 281 Mich App 35, 39 (2008). If the language is unambiguous, we assume that the Commission, in promulgating the rule, intended its plain meaning and we must enforce the rule as written. *Id.* In other words, the Commission “may not speculate” about the intent of the rule “beyond th[e] words expressed in it.” *Lash v Traverse City*, 479 Mich 180, 194 (2007). We must “assign to every word or phrase its plain and ordinary meaning unless otherwise defined in the statute, or unless the [Commission] has used ‘technical words and phrases . . . [that] have acquired a peculiar and appropriate meaning in the law.’” *Alvin Motor*, 281 Mich App at 40, quoting MCL 8.3a. If a term is not defined in a statute, a dictionary may be consulted to aid in ascertaining its plain and ordinary meaning. *McCormick v Carrier*, 487 Mich 180 (2010). Finally, we must refrain from reading “a word or phrase of a statute in isolation; rather, each word or phrase and its placement must be read in the context of the whole act.” *Id.*, citing *Mayor of Lansing*, 470 Mich at 167-168. A “word or phrase is given meaning by its context or a setting . . . [and, generally,] words and clauses will not be divorced from those which precede and those which follow.” *Griffith v State Farm Mutual Automobile Ins Co*, 472 Mich 521, 533 (2005) (internal quotations and citations omitted). These principles guide our decision whether MGM’s proposed self-tap system constitutes a “vending machine” within the scope of R 436.1045(4).

III. Historical Interpretation

MGM urges the Commission to consider similar systems purportedly operating in licensed establishments in deciding that MGM’s proposed system is not a “vending

machine.” MGM states that other MLCC licensed retailers utilize and have been granted permission by the MLCC (either explicit or implicit) to utilize alcohol dispensing devices similar to the Virtual Pitcher proposed by MGM. Further, MGM raises the issue of disparate treatment between MGM and other similarly situated retail licensees constituting a violation of MGM’s rights to equal protection under Federal and State law. We can find no Commission order specifically addressing similar devices. The question before the Commission in this declaratory ruling is whether or not the device proposed by MGM meets the administrative rule requirements.

As to whether or not the Commission has implicitly allowed a substantially similar device, we note that in at least one instance, Commission staff concluded that a substantially similar device, the Table Tender, was a prohibited vending machine. This system, which is also a self-tap beer dispensing system, was informally considered by the Commission in 2009, following inquiry from the device-distributor’s counsel whether the system violated any MLCC rules. The Commission, through its Enforcement staff, informed the device-distributor’s counsel that the table top delivery system would violate Rule 436.1045(4). Like MGM’s proposed device, this system included draft beer taps installed on tables, and patrons could directly dispense beer to themselves. The system itself did not accept payment for the beer; it was not a coin or currency operated device.

IV. Analysis

Although informative, the Commission’s decisions concerning other devices do not dictate the conclusion here. Even if we assume that the other devices were substantially similar to MGM’s proposed system, we do not have to examine whether

any of those devices constitute “vending machines” because those devices are not presently under our consideration. Instead, the Commission’s ruling today is confined to whether MGM’s proposed device is a “vending machine, whether or not operated by coin or currency, that dispenses a type of alcoholic liquor directly to a customer.” After reviewing the materials MGM has submitted and considering the rule’s language, we conclude that it is a vending machine.

The term “vending machine” is not defined in the rule, so the plain meaning applies, as illuminated by its context. *Alvin Motor*, 281 Mich App at 40; *Griffith*, 472 Mich at 533. The plain meaning of this term generally refers to a machine that dispenses a product to a customer after the customer has inserted money; the Merriam-Webster dictionary defines “vending machine” as “a coin operated machine for selling merchandise.”

But R 436.1045(4) applies more broadly, given that it applies to “any vending machine, whether or not operated by coin or currency, that dispenses a type of alcoholic liquor directly to a customer.” Because it does not matter whether the machine accepts money from the customer, the rule plainly does not refer to a “vending machine” as described in the dictionary. Instead, the rule emphasizes whether the device dispenses alcoholic liquor directly to the customer. The rule’s exclusion of in-room bar devices similarly supports that the typical pop or candy machine is not the only type of machine the rule prohibits. Again, whether the machine provides direct consumer access to alcohol is the paramount consideration.

MGM claims that its proposed self-tap system is not a “vending machine” simply because it is not a traditional vending machine that accepts money from the customer.

As previously mentioned, however, the rule expressly applies regardless whether the machine accepts money. MGM does not dispute that its proposed system would dispense alcohol directly to the customer, which is the rule's primary concern. Thus, we conclude that MGM's proposed self-tap system constitutes a prohibited vending machine under R 436.1045(4).

V. Conclusion

The Commission concludes that, based on the facts MGM presented, its proposed self-tap system constitutes a prohibited vending machine.

MICHIGAN LIQUOR CONTROL COMMISSION

Andrew J. Deloney, Chairman

Teri L. Quimby, Commissioner

Dennis Olshove, Commissioner

By its action of November 27, 2012.