



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

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In the matter of the request of)
CHATEAU OPERATIONS, LTD.)
)
For a declaratory ruling on August 26, 1998)
on the applicability of MCL 436.1537(2) to the)
sale of wine for on-premises consumption)
)

At the June 20, 2017 meeting of the Michigan Liquor Control Commission in Lansing, Michigan.

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

ORDER RESCINDING DECLARATORY RULING

Chateau Operations, Ltd. ("applicant") requested a declaratory ruling and the Commission issued a declaratory ruling on August 26, 1998 regarding the applicability of MCL 436.1537(2) to the sale of wine for on-premises consumption.

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof.

Findings of Fact

The Legislature has amended the definition of “wine maker” in MCL 436.1113(9) and the list of vendors that may sell alcoholic liquor at retail in MCL 436.1537 several times since the 1998 declaratory ruling for Chateau Operations, Ltd.

As currently codified, MCL 436.1113(9) defines “wine maker” as:

"Wine maker" means any person licensed by the Commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to sell that wine to a retailer, and as provided for in section 537.

As currently codified, MCL 436.1537(1)(o) includes the following in the list of vendors that may sell alcoholic liquor at retail:

Wine maker, where wine may be sold by direct shipment, at retail on the licensed premises, and as provided for in subsections (2) and (3).

Both MCL 436.1113(9) and MCL 436.1537(1)(o) provide that a wine maker may sell its wine at retail on its licensed premises, which includes the sale of wine for consumption on or off the premises. Based on the current construction of these sections, the provisions regarding a wine maker selling wine in a restaurant for on premises consumption on its licensed premises under MCL 436.1537(2) do not limit a wine maker to selling wine for consumption on its licensed premises only in a restaurant.

Furthermore, the Commission finds that it erred in the conclusion in the August 26, 1998 declaratory ruling for Chateau Operations, Ltd. In concluding that a restaurant operated by a wine maker under MCL 436.1537(2) must comply with the provision under MCL 436.1521(1)(c) that requires at least 50% of the gross receipts to be derived from the sale of food for consumption on the premises. The Commission finds that MCL 436.1521(1)(c) does not apply to a wine maker’s restaurant under MCL 436.1537(2), nor does it provide a general requirement for the gross sales of any other restaurant described in the Michigan Liquor Control Code and promulgated rules except for the licenses specifically referenced in MCL 436.1521.

Conclusions of Law

Pursuant to MCL 24.263 an agency may not retroactively change a declaratory ruling, but is not prevented from prospectively changing a declaratory ruling by rescinding it.

After review and discussion of the issues at the meeting, the Commission concludes that the August 26, 1998 declaratory ruling for Chateau Operations, Ltd. should be rescinded due to changes in the Michigan Liquor Control Code and that the conclusion of the declaratory ruling erroneously applied a requirement in one section of the Code to another section of Code.

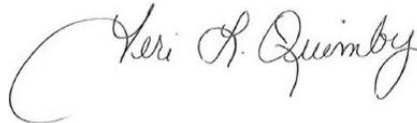
Decision

THEREFORE, IT IS ORDERED that the August 26, 1998 declaratory ruling for Chateau Operations, Ltd. is RESCINDED immediately.

MICHIGAN LIQUOR CONTROL COMMISSION



Andrew J. Deloney, Chairman



Teri L. Quimby, Commissioner



Dennis Olshove, Commissioner