



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

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In the matter of the request of )  
**TIN CAN-WEST SAGINAW, LLC,** )  
for a declaratory ruling regarding the legality )  
of a customer loyalty card under MCL 436.2025(1). )  
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At the February 14, 2012, meeting of the Michigan Liquor Control Commission in  
Lansing, Michigan.

PRESENT: Andrew J. Deloney, Chairman  
Teri L. Quimby, Commissioner  
Donald B. Weatherspoon, Commissioner

**DECLARATORY RULING**

Tin Can-West Saginaw, LLC (Tin Can), filed a request for declaratory ruling on November 22, 2011. At a December 20, 2011 meeting, the Commission granted Tin Can's request concerning the legality of its "10 for 10 Card" customer loyalty program. Specifically, Tin Can asks whether the program violates § 1025 of the Michigan Liquor Control Code (Code), MCL 436.2025.

**I. Facts Presented**

Tin Can, a holder of a Class C license, has instituted a customer loyalty-card program called the "10 for 10 Card." Through its counsel, Tin Can indicates that the holder

of the loyalty card “receive[s] one (1) stamp on [his or her] loyalty card upon each visit to Tin Can West.”<sup>1</sup> After 10 visits to the licensed establishment, a customer will have 10 stamps on the card, which entitles the customer to “receive a \$10 gift certificate.” The gift certificate states that it is “[g]ood for \$10 towards your tab--valid for redemption on your 11<sup>th</sup> visit--not redeemable for cash.” Tin Can’s customers may use the gift certificate to obtain any menu item at Tin Can, including alcoholic liquor. Upon learning of the “10 for 10 Card” a member of the Commission’s Enforcement Section issued a violation warning to Tin Can on the basis that the program violated the Code’s prohibition on giving away alcoholic liquor, MCL 436.2025(1). Tin Can asks whether its “10 for 10 Card” program violates that prohibition.

## II. Applicable Law

In interpreting MCL 436.2025(1), the Commission must implement the principles of statutory construction applied by Michigan courts. The primary goal of statutory construction is to “give effect to the intent of the Legislature.” *Alvan Motor Freight, Inc v Dep’t of Treasury*, 281 Mich App 35, 39 (2008). If the statute is unambiguous, the Commission “must assume that the Legislature intended its plain meaning, and the statute must be enforced as written.” *Id.* In other words, the Commission “may not speculate regarding [the Legislature’s] intent beyond th[e] words expressed in the statute.” *Lash v Traverse City*, 479 Mich 180, 194 (2007). Further, a statutory provision is “ambiguous only if it irreconcilably conflicts with another provision or when it is *equally* susceptible to more than a single meaning.” *Alvan Motor*, 281 Mich App at 39, quoting *Mayor of Lansing v*

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<sup>1</sup> In its initial requests, both written and oral, Tin Can used the word “visit” and not “purchase.” In a letter dated January 26, 2012, Tin Can supplemented its request by adding that a purchase is necessary to obtain a stamp. This ruling considers the information contained in the supplemental letter.

*Public Service Comm’n*, 470 Mich 154, 166 (2004) (emphasis supplied). In all other cases, courts must “assign to every word or phrase its plain and ordinary meaning unless otherwise defined in the statute, or unless the Legislature has used ‘technical words and phrases . . . [that] may have acquired a peculiar and appropriate meaning in the law.’” *Id.* at 40, quoting MCL 8.3a. Finally, courts 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.

Tin Can’s inquiry centers on what it means to “give away” alcoholic liquor under § 1025. That provision unequivocally states, “[a] vendor shall not give away alcoholic liquor of any kind or description at any time in connection with his or her business, except manufacturers for consumption on the premises only.” MCL 436.2025(1).

The prohibition stated in subsection (1) is limited by three exceptions other than the one stated in that subsection. Subsection (2) states that subsection (1) does not prohibit various supplier licensees (and entities they hire) from conducting samplings or tastings of an alcoholic liquor product before it is approved for sale in Michigan, provided they first obtain the Commission’s written approval. MCL 436.2025(2)(a). The prohibition also does not apply to persons conducting a “sampling or tasting authorized by section 537 or [Commission] rule.” MCL 436.2025(2)(b). Finally, both Class A and B hotel licensees may give away alcoholic liquor under limited circumstances. MCL 436.2025(2)(c).

### **III. Historical Interpretation**

Historically, the Commission has prohibited the types of transactions that Tin Can presents for the Commission’s consideration. For example, the three Detroit casinos that are regulated by the Michigan Gaming Control Board (MGCB) and licensed by the

Commission have complimentary or “comp” programs in which casinos distribute certain amenities “to casino patrons to reward their patronage or to provide goodwill.” See MGCB Board Resolution 2006-1, Part IV, Section 5. Among the rewards customers may receive are coupons or cards that may be used at various local restaurants. The MGCB, through consultation with the Commission, permits these kinds of rewards on the condition that the restaurants involved “not accept comp cards or coupons, or their equivalent, as payment for alcohol or convert comp cards or coupons, or their equivalent, to cash or its equivalent.” MGCB Board Resolution 2006-01, Part IV, Section 5(a). This condition stems from the Code’s prohibition on giving away alcoholic liquor. At the time, a former Liquor Control Commission Chairman served as the Executive Director of the MGCB. He relied on his previous experience as Chairman of the Commission to shape the conditions under which “comps” could be used.

Similar conditions prohibiting giving away alcoholic liquor were included when the MGCB addressed the “comp” programs again in 2008 and 2009. See generally MGCB Board Resolution 2008-4 and MGCB Board Resolution 2009-1. In each of these instances, the Board relied on the assistance of the Commission to ensure that the program complied with the Code and administrative rules. The Commission’s Enforcement Section played an integral role in advising the MGCB on this restriction’s scope.

Additionally, in 2006 the Commission’s Enforcement Division learned that a Licensee was giving away alcoholic beverages at its sports venue through certificates sent to season ticket holders. The certificates could be used at all concession stands, including bars, at the venue. Before the giveaway, the Licensee had been told by the Commission’s Director of Enforcement not to use the certificates for alcoholic beverages.

#### **IV. Analysis**

The Commission is again called on to address whether a similar program violates the Code's prohibition against giving away alcoholic liquor. According to the "10 for 10 Card" program details, a patron receives one stamp on the card for each "visit" to the Tin Can. Although the card itself does not state that a patron must make a purchase to earn a stamp on the card, Tin Can has recently stated in a letter to the Commission that a purchase is a necessary prerequisite to getting a stamp. With ten stamps, a patron is given a ten dollar gift certificate "[g]ood for \$10 towards [a patron's] tab" that may be used on the patron's 11<sup>th</sup> visit to Tin Can.

To "give away" something means to make a gift of it or "to turn over the possession or control of [it] to someone without cost or exchange." See definition of "give" in *Webster's New World Dictionary*, 3d College Ed. (1988). Thus, the Commission must determine whether, through the "10 for 10 Card" program, Tin Can makes a gift of alcoholic liquor.

Tin Can suggests that the "10 for 10 Card" program does not violate the Code's prohibition on giving away alcoholic liquor because it does not require the patron to use the gift certificate to obtain alcoholic liquor. In other words, because a patron may use the gift certificate to obtain something other than alcoholic liquor, Tin Can believes that it is not giving it away. But regardless of whether the customer may choose to obtain food or non-alcoholic beverages, the customer could use the gift certificate for alcoholic beverages. The gift certificate represents a gift of \$10 worth of Tin Can's menu items, including alcoholic liquor. As a result, the customer may receive alcoholic liquor from Tin Can without paying for it. The only thing the customer exchanges for the alcoholic liquor is value

from the gift certificate,<sup>2</sup> which Tin Can has given to the customer. Allowing a patron to obtain \$10 worth of alcoholic liquor without having to pay for it is the very transaction MCL 436.2025(1) prohibits.

Tin Can further asserts that the “10 for 10 Card” program is legal because it does not violate the original purpose behind the enactment of MCL 436.2025(1). Tin Can claims that “the purpose of [MCL 436.2025(1)] was to prohibit the unsavory practice of saloons offering free alcohol to customers as an inducement to lure them into their establishments, leading to unsuspecting customers being taken advantage of resulting in further alcohol abuse.” In its view, the “10 for 10 Card” is different because it “rewards loyal customers with a gift certificate to be used at the customer’s discretion.” In other words, Tin Can suggests that its motive saves its act from violating the statute.

Tin Can’s request that the Commission focus on the statute’s purported original purpose cannot distract the Commission from the statute’s plain language or the well-established rules governing statutory interpretation. In any event, Tin Can’s rendition of the statute’s purpose lacks documentary support and does not assist with answering the legal question at hand. Because MCL 436.2025(1) is clear and unambiguous, the Commission must derive the Legislature’s intent from the statutory language. Because the statute does not include any specialized or technical terms or definitions in this regard, the Commission must give these terms their ordinary meanings. Whether a licensee is attempting to entice

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<sup>2</sup> Tin Can does not address whether the gift certificate constitutes “cash” as defined in § 107(1). “‘Cash’ means money in hand, bank notes, demand deposits at a bank, or legal tender, which a creditor must accept according to law. Cash does not include call loans, postdated checks, or promissory notes.” MCL 436.1107(1). Except under limited circumstances, the Code requires sales of alcoholic liquor to be for cash only. MCL 436.2013.

unsuspecting patrons or is merely rewarding its loyal customers, the fact remains that the Code prohibits giving away alcoholic liquor unless one of the exceptions applies. To reach beyond the clear language of the statute or to speculate on what the Legislature *may* have meant would violate the basic tenets by which Michigan courts review laws. Tin Can's argument that the Commission's "current interpretation" of the statute will have "an extremely negative impact on a wide variety of marketing tools" is irrelevant to the legal issue.

Tin Can muddles the issue by suggesting that it is not giving away alcohol, but instead is giving away a gift certificate. In either case, no customer has paid for what Tin Can is providing. As long as the free gift certificate may be exchanged for alcohol, Tin Can is inviting a violation of the Code. To avoid violating the statute, Tin Can may include a disclaimer on the loyalty card and gift certificate stating that the gift certificate may not be applied toward alcoholic liquor. At the meeting when the Commission granted Tin Can's request for a declaratory ruling, Tin Can's counsel provided two examples of restaurants issuing gift cards that could be used towards the purchase of alcoholic liquor. Such examples do not determine how the Commission should interpret the statute and apply it to the facts that Tin Can presents. Whether other licensees offer gift cards that can be used to obtain alcoholic liquor does not render the "10 for 10 Card" legal.

## **V. Conclusion**

The Commission concludes that the relevant portions of the Code, MCL 436.2025(1) and MCL 436.2013, are clear and unambiguous. Therefore, guided by the well-established principles of statutory construction, the Commission must not look any further than the plain language of the statute to determine the Legislature’s intent to prohibit licensees such as Tin Can from giving away alcoholic liquor except under very limited circumstances. Based on the facts presented in Tin Can’s declaratory ruling request, the Commission concludes that when customers use the \$10 gift certificate to obtain alcoholic liquor, Tin Can engages in giving away liquor in violation of MCL 436.2025(1). The Commission limits its ruling exclusively to the “10 for 10 Card” program.

MICHIGAN LIQUOR CONTROL COMMISSION

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Andrew J. Deloney, Chairman

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Teri L. Quimby, Commissioner

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Donald B. Weatherspoon, Commissioner

By its action of February 14, 2012.