

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

2017 JUN 15 PM 4: 04
MLOCC LICENSING

In the matter of the request of
WATKINS TRANSPORT, INC.
1911 Steamburg Road
Hillsdale, Michigan 49242

Request ID No. 902034

**CLAIM OF APPEAL, OR IN THE
ALTERNATIVE, REQUEST FOR
DECLARATORY RULING**

City of Hillsdale
Hillsdale County, Michigan

NOW COMES the Applicant, Watkins Transport, Inc. (hereafter "Watkins"), by and through its attorneys, Knaggs Brake, P.C., and appeals the Michigan Liquor Control Commission's (hereafter the "Commission") final decision letter dated July 27, 2017 (see **Exhibit A**).¹

In the alternative, Watkins requests the Commission issue a Declaratory Ruling pursuant to R 436.1971 and Section 64 of Michigan's Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, MCL 24.264 that Watkins timely applied for a speciality designated merchant ("SDM") license for the above location pursuant to MCL 436.1533 (7) by mailing its application within the sixty (60) day quota waiver period.

Under R 436.1925 (2), Hearing on Matters other than Violations, "... If a license application is denied, then the aggrieved license applicant may request an appeal hearing, and the commission shall grant the hearing. The request shall be made to the Lansing office of the commission within 20 days from the date of the mailing of the decision of denial." This appeal was timely filed and Watkins requests an appeal hearing be granted.

¹The letter denying Watkins' application mistakenly refers to the quota for SDD licenses, upon information, the quota for SDM licenses within the City of Hillsdale is also exceeded.

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HEARINGS APPEALS

The Commission's final decision letter states the request for the issuance of a SDM license, with permits, to Watkins was denied because the quota for SDM licenses for City of Hillsdale is filled.

Watkins, however, applied for the SDM license under the quota waiver provisions set forth in Section 533(7) of the Michigan Liquor Control Code of 1998; MCL 436.1533(7) ("the Act") which states, in pertinent part:

(7) The commission shall waive the quota under subsection (5) if both of the following apply:

(a) The applicant applies for the specially designated merchant license within 60 days after the effective date of the amendatory act that added subsection (5).

(b) The applicant is a retail dealer that holds a license issued under section 6(1) of the motor fuels quality act, 1984 PA 44, MCL 290.646. . . .

In denying Watkins application, the Commission concluded that Watkins had not "applied for" the SDM license within the Section 533(7) waiver window and was therefore subject to the Section 533(5) quota limitation. Watkins submits that it properly "applied for" the SDM license within the waver window when it mailed its application on March 6, 2017 via USPS priority mail.

**WATKINS' SDM LICENSE APPLICATION
SHOULD BE PROCESS UNDER SECTION 533(7)**

Under MCL 436.1533(7), an applicant who "applies for" a SDM license within sixty (60) days after the effective date of the amendment were not subject to the quota limitation. Given that the sixtieth day after the effective date of the amendment fell on a Saturday, March 4, 2017, the

Commission used its discretion to extend the final date to Monday, March 6, 2017. In doing so, the Commission essentially adopted the rule for computation of time found in Michigan Court Rule, MCR 1.108 which states:

(1) The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to court order; in that event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is closed pursuant to a court order.

The term “applies for” is not defined in the Act. Thus, the question is what did the Legislature intend when it required an applicant to “apply for” a SDM license within sixty (60) days in order to enjoy the quota waiver.

The overriding goal guiding judicial interpretation of statutes is to discover and give effect to legislative intent. The starting place for the search for intent is the language used in the statute. Unless defined in the statute, every word or phrase therein should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. The plain meaning rule of statutory interpretation is an objective standard of review, predicated on the assumption that there exists a cultural consensus about the meanings of a great number of words.

* * *

Reference to a dictionary is appropriate to ascertain what the ordinary meaning of a word is. However, because even the most common word can have a number of meanings, a court must also consider the context in which it appears in order to determine which of these ordinary meanings it carries in the statute under scrutiny.

Bio-Magnetic Resonance v Department of Public Health, 234 Mich App 225, 229-230; 593 NW2d 641 (1999). It is important to note that the Legislature did not require an applicant to “file” and application within the sixty (60) day window, nor did it require that an application be “received” by

the Commission within the sixty (60) day window, unlike the clear mandate it used in Section 525(4) of the Act related to computation of time. . . . [T]he commission shall issue an initial or renewal license not later than 90 days after the applicant **files** a completed application. The application is considered to be received the date the application is received by an agency or department of this state. (Emphasis added) Watkins contends that the Legislature’s use of the phrase “applies for” was specifically used to mean something other than “filing” with or “receipt” by an agency or department of the state.

Merriam-Webster Dictionary defines the root word apply, when used as an intransitive verb, as: “to make an appeal or request especially in the form of a written application, [example] apply for a job.” See also, *Black’s Law Dictionary*, Rev. 4th Ed.:

Apply. To make a formal request or petition, usually in writing, to a court, officer, board, or company for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. *In re Bucyrus Road Machinery Co.*, C.C.A. Ohio, 10 F2d 333,334.

Watkins’ act of placing its LCC-100 Retail License & Permit Application in the priority United States Postal Service mail on the extended sixty (60) day deadline constituted “applying for” the SDM license under the ordinary meaning of Section 533(7). (See, **Exhibit B** for confirmation that Watkins’ SDM application was mailed on March 6, 2017 and received by the commission on March 7, 2017.) This conclusion is supported by the contract law doctrine known as the mailbox rule.

The mailbox rule is a doctrine that applies to principles of contract formation, offer and acceptance.

One who makes an offer, knowing that it is to be accepted when the offerer is not in personal communication with the offerer, contemplates acceptance by mail or telegraph with the corresponding legal consequences. The great weight of modern authority is to the effect that the acceptance is operative, if made by mail, from the moment that its transmission begins. . . . Depositing the letter in the mail box instead of the post office was sufficient, being according to commercial usage and common business methods. . . . The bid made by plaintiff was beyond his withdrawal as soon as notice of its acceptance was mailed. (Citations omitted)

Kutsche v Ford, 222 Mich 442, 447; 192 NW 714 (1923).

In our case, by amending the Act, the Legislature essentially made an offer to gas station owners. It offered to allow the Commission to process SDM applications without regard to the newly established quota system if the applicant “applies for” the license within sixty (60) days of the effective date of the amendment. Watkins accepted that offer by mailing its acceptance (the application) within that period. Under *Kutsche*, the acceptance was operative the moment the application was deposited with the USPS.

Michigan court rule also supports this interpretation. Michigan Court Rules draw a distinction between “filing” documents and “service” of documents. While “filing” with the Court requires actual receipt by the Court Clerk, under MCR 2.107(C)(3), “service” is complete at the time of mailing:

(3) *Mailing*. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. *Service by mail is complete at the time of mailing.* (Emphasis added)

CONCLUSION

Section 533(7) does not expressly require a SDM license application be received by or filed with the Commission within the extended sixty (60) day window in order to be process

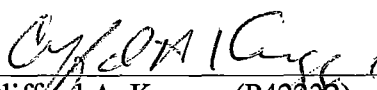
without regard to the SDM quotas. Under the ordinary meaning of the language, the Legislature intended the applicants that “applied for” an SDM license within that window would be processed under the waiver provisions. Watkins met that requirement with it placed its application and fees in USPS priority mail on March 6, 2017.

WHEREFORE, the Watkins respectfully requests the Commission to reverse its denial of the application and continue to process the application pursuant to Section 533(7). In the alternative, if the Commission finds that the application denial is not subject to the appeals process, Watkins respectfully request the Commission to issue a Declaratory Ruling that the requirements of Section 533(7) are met if the SDM applicant placed a completed application and fees in the United States mail on or prior to March 6, 2017 and direct that its application be processed pursuant to Section 533(7).

Respectfully submitted,

WATKINS TRANSPORT, INC.

By Its Attorneys,
Knaggs Brake, P.C.



Clifford A. Knaggs (P42232)
7521 Westshire Drive, Suite 100
Lansing, Michigan 48917
517-622-0590/Fax 517-622-8463

DATED: August 15, 2017

Exhibit A

CLAIM OF APPEAL, OR IN THE ALTERNATIVE,
REQUEST FOR DECLARATORY RULING



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

NOTICE OF QUOTA REQUIREMENTS

(Authorized by MAC Rules 436.1141(1), 436.1001, 436.1129 and 436.1135)

July 27, 2017

Patrick McAvoy
Watkins Transport, Inc.
1911 Steamburg Road
Hillsdale, MI 49242

Request ID # 902034

Dear Applicant/Licensee:

Your application for a New Specially Designated Distributor License, located at 240 South Broad Street, Hillsdale, MI 49242; Hillsdale County, does not appear to meet the requirements of the Liquor Control Act and Rules for the reason shown below:

The number of SDD licenses is limited to 1 for every 3,000 population by the provisions in Rule 436.1141(1). The quota for SDD license in the governmental unit of your business location is filled at the present time. Your request will be placed on file and if the quota in this governmental unit increases within the next ten years, your request will be activated. **If you want your request to remain active beyond that date, you must notify us again in writing so we may update our records.**

Governmental Unit: Hillsdale City/ Hillsdale County

Population: 8305

Quota: 3 SDD Licenses Issued: 3

If you have any questions please feel free to contact the Retail Licensing Section at (866) 813-0011.

Sincerely,

MICHIGAN LIQUOR CONTROL COMMISSION

Enclosure

cc:

Exhibit B

CLAIM OF APPEAL, OR IN THE ALTERNATIVE,
REQUEST FOR DECLARATORY RULING

36617

Priority
mail

11.16.15

JSPS TRACKING # **9114 9999 4431 4124 1968 99**
& CUSTOMER RECEIPT For Tracking or inquiries go to USPS.com
or call 1-800-222-1811.

Refers to Wine
Application
DUD 88 Broad

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 9114999944314124196899



Delivered

Updated Delivery Day: Tuesday, March 7, 2017 ⓘ

Product & Tracking Information

See Available Actions

Postal Product:

Features:

USPS Tracking®

DATE & TIME

STATUS OF ITEM

LOCATION

March 7, 2017, 8:32 am

**Delivered, Individual
Picked Up at Postal
Facility**

LANSING, MI 48924



Your item was picked up at a postal facility at 8:32 am on March 7, 2017 in LANSING, MI 48924.

March 7, 2017, 8:31 am

Arrived at Post Office

LANSING, MI 48924

March 7, 2017, 2:11 am

Departed USPS Facility

ALLEN PARK, MI 48101

DATE & TIME	STATUS OF ITEM	LOCATION
March 7, 2017, 1:10 am	Arrived at USPS Origin Facility	ALLEN PARK, MI 48101
March 6, 2017, 5:49 pm	Departed Post Office	HILLSDALE, MI 49242
March 6, 2017, 4:19 pm	Picked Up	HILLSDALE, MI 49242

[See Less](#) ^

Available Actions

[See Less](#) ^

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[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)