



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

* * * * *

In the matter of the request of)
JAMES CRANK,)
for a declaratory ruling regarding the interpretation of)
MCL 436.1411)
_____)

At the June 24, 2014 meeting of the Michigan Liquor Control Commission
("Commission") in Lansing, Michigan.

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

DECLARATORY RULING

James Crank ("Crank") filed a request for declaratory ruling on April 24, 2014. At an April 29, 2014 meeting, the Commission granted Crank's request to issue a declaratory ruling concerning the Commission's interpretation of MCL 436.1411. Specifically, Crank asks whether two separately licensed companies may transfer alcoholic beverages between each other if both companies share the same sole stockholder.

I. Facts Presented:

JPE Restaurant Corporation ("JPE") holds a micro brewer license with permits for outdoor service and beer and wine sampling. JPE's license was originally issued on May 1, 2012, and its licensed premises are located at 213 S. State, Big Rapids,

Michigan. JJC Restaurant, Inc. ("JJC") holds a micro brewer license and an outdoor service permit. JJC's license was originally issued on January 29, 2014, and its licensed premises are located at 454 68th Street SW, Grand Rapids, Michigan. The sole stockholder of both companies is Crank. Despite Crank's role as sole stockholder in each company, JPE and JJC are separate and distinct corporate entities.

II. Applicable Law

MCL 436.1411 states:

- (1) A brewer that is not licensed as a micro brewer may sell its beer for on-premises consumption at not more than 2 locations in this state that are on any of its licensed brewery premises where the brewer engages in the production of beer. A licensed micro brewer that produces in total fewer than 30,000 barrels of beer per year may sell its beer for on-premises consumption at any location in this state that is on any of its licensed brewery premises where the micro brewer engages in the production of beer. A licensed micro brewer that produces in total 30,000 barrels of beer or more per year may sell its beer for on premises consumption at no more than 3 locations in this state that are on any of its licensed brewery premises where the micro brewer engages in the production of beer.
- (2) Subject to the limitations in subsection (1), if a brewer or micro brewer has more than 1 licensed brewery premises, that brewer or micro brewer may sell for on-premises consumption beer that it has produced at 1 licensed brewery premises at any of its other licensed brewery premises.
- (3) As used in this section, "engages in the production of beer" means the full and complete brewing process and not just a portion of the brewing process.

Because the ultimate determination of Crank's inquiry hinges solely on the interpretation of the statutory language used in MCL 436.1411, the Commission must utilize the rudimentary principles of statutory construction applied by Michigan courts. The

hallmark of statutory construction requires the body interpreting statutory language 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, if the statute is unambiguous, courts “may not speculate regarding that intent beyond those 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 Pub Service Comm*, 470 Mich 154, 166 (2004) (emphasis supplied). In all other cases, however, 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, citing 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.

III. Analysis

Crank contends that, as the sole stockholder of both corporations, he is the licensee. Under his interpretation of the statute, he is the “licensed micro brewer” referred to in the statutory language, and JPE and JJC are his “licensed brewery premises where the micro brewer engages in the production of beer.” The Commission concludes that this

interpretation is inconsistent with the legislative intent of the Liquor Control Code of 1998.

Under § 105(11), a “brewer” is defined as a person located in this state that is licensed to manufacture and sell the beer it produces to licensed wholesalers. Additionally, § 109 (3) defines a “micro brewer” as a brewer that produces less than 60,000 barrels of beer per year and is allowed to sell its beer directly to consumers at its licensed premises and to retailers. Further, § 111(1) defines a person as “an individual, firm, partnership, limited partnership, association, limited liability company, or corporation.” When read in conjunction with these statutory provisions, it is clear that the “licensed micro brewer” referred to in MCL 436.1411 is the individual, firm, partnership, limited partnership, association, limited liability company, or corporation that was granted a license by the Commission.

Under Michigan law, a corporation is its own person, “an entity distinct and separate from its owners, even when a single shareholder holds ownership of the entire corporation.” *Hills and Dales Gen Hosp v Pantig*, 295 Mich App 14, 20 (2011). JPE and JJC are both licensed micro brewers. They applied for and were granted separate licenses. Despite their common ownership, they are separately licensed and they are separate and distinct entities from each other. More importantly, they are both separate entities from Crank, the individual, despite his role as the sole stockholder of both entities.

Applying the statutory interpretation factors to the language in MCL 436.1411, it is clear that JPE and JJC are prohibited from transferring product between each other because they are separate and distinct entities. First, MCL 436.1411 neither irreconcilably conflicts with any other provision, nor is it susceptible to more than one interpretation. It

fully occupies the field regarding the circumstances under which a micro brewer may sell its beer on its licensed premises.

Second, the plain language of MCL 436.1411 makes it clear that it allows a single brewer or micro brewer to sell its beer for on-premises consumption at more than one of its own licensed premises. By using the article "a" in front of "brewer or micro brewer" the legislature made it clear that it was addressing a single entity. The *American Heritage Dictionary, Second College Edition*, pg. 66, provides that, when used as an article, "a" is "used before nouns and noun phrases to denote a single, but unspecified, person or thing."

Similarly, by using the word "its" the legislature made it clear that a micro brewer may sell its beer at other licensed premises operated by that particular micro brewer. Again, the *American Heritage Dictionary, Second College Edition*, pg. 681, defines the adjective "its" as "[t]he possessive form of it. . . [u]sed to indicate possession or the agent or recipient of an action."

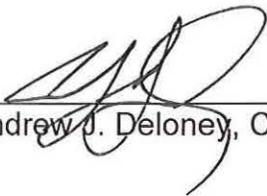
A plain-language review reveals that MCL 436.1411 was intended to allow a brewer or micro brewer to sell its beer for on-premises consumption at a limited number of its own licensed premises where the micro brewer produces the beer. Therefore, the Commission's interpretation of MCL 436.1411 gives full effect to the intent of the Legislature.

IV. Conclusion

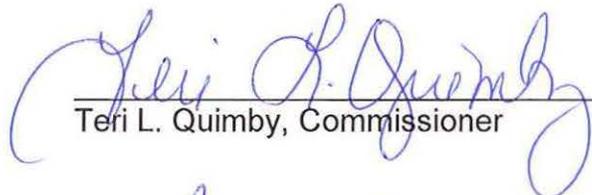
Despite Crank's desire to operate JPE and JJC as one entity, the Commission concludes that MCL 436.1411 is clear and unambiguous; therefore, guided by the well-

established principles of statutory construction, it must not look any further than the plain language of the statute to determine the Legislature's intent to prohibit JPE and JJC, separate and distinct entities, from transferring product between each other.

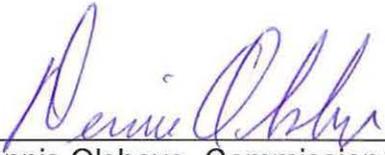
MICHIGAN LIQUOR CONTROL COMMISSION



Andrew J. Deloney, Chairman



Teri L. Quimby, Commissioner



Dennis Olshove, Commissioner

Date mailed: June 24, 2014