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Mr. Hugh Ennis, Superintendent
Attn: Kay McKay, Chairperson
Arizona State Liquor Board
800 W. Washington, Fifth Floor
Phoenix, Arizona 85007

Re: I90-051 (R89-154)

Dear Ms. McKay:

You have asked several questions regarding the Arizona State Liquor Board's (Board) authority to extend beyond the six months required by A.R.S. § 4-203(J) the time by which a licensee must commence using a license. Specifically, you have asked when a licensee must request the additional time in order to be timely. We conclude that a licensee must request such additional time before six months of non-use has expired. You have also asked whether the Board may excuse the licensee's failure to file a timely request. We conclude that the Board may not excuse a licensee's failure to file a timely request because the license automatically reverts to the State after six months of non-use. You have further asked whether the statutory requirement for an annual license renewal affects the Board's authority to grant additional time to put a license into use. We conclude that it does not. Finally, you have asked whether a person other than a named licensee may request additional time to place a license into use if the person claims a property interest in the license. We conclude that such an interested person may request the additional time, provided the Board determines that the named licensee is in good faith attempting to put the license into use.

Liquor licensees must use licenses for their intended

purposes in accordance with A.R.S. § 4-203(J), which provides as follows:

A license which is not used by the licensee for a period in excess of six months shall revert to the State, except that the Board may grant additional time if, in its judgment, the licensee is in good faith attempting to comply with this subsection.

This statute was interpreted by the Arizona Supreme Court in Arizona State Liquor Board v. Poulos, 112 Ariz. 119, 538 P.2d 393 (1975). In Poulos, the Arizona Supreme Court affirmed the Liquor Board's 1971 revocation of a license on the grounds that the license had not been in use from 1968 until 1971, when the licensee requested an extension pursuant to A.R.S. § 4-203(F) (now codified as A.R.S. § 4-203(J)). The Supreme Court held that the statute was enacted to end a practice of holding a license for speculative purposes rather than for the purpose of conducting a liquor business. The practice had become so widespread that licenses held for sale came to be known as "vest pocket" licenses. Poulos, 112 Ariz. at 121, 538 P.2d at 395. The Legislature disapproved this use of liquor licenses and determined that a license would revert to the state if within a specified period of time it was not used for the business activity covered by the license. Id. The court held that the statute required any license to revert immediately upon the passage of six months of non-use without an extension as provided by law. Therefore, the licensee could not prevent the reversion by applying for an extension of time after the six months had elapsed. Id., 112 Ariz. at 121-22, 538 P.2d at 395-96.

The Poulos decision answers your first two questions. Because Poulos holds that a liquor license not used for more than six months shall automatically revert to the state, a licensee must apply for an extension before the six months period has elapsed. As long as the request is made in a timely fashion, the Board may grant the extension if it determines that the licensee is attempting in good faith to put the license into use. A.R.S. § 4-203(I).^{1/} The extension may continue until such time as the license is placed into use or until the Board determines that the licensee is not in good faith attempting to place the

^{1/}In addition to obtaining permission to keep a license out of use for more than six months, a licensee also must file a timely notice with the superintendent that the licensee has suspended the operation of the license. A.A.C. R4-15-225(B).

license into use. However, if the license has reverted before such a request is made, the Board is powerless to grant any extension to the licensee. The Board may not excuse the failure to file a timely request for additional time to put a license in use. Poulos.

You also asked about the effect of the annual license renewal statute, A.R.S. § 4-209(A), on the Board's authority to grant extensions under A.R.S. § 4-203(J). A.R.S. § 4-209(A) provides in pertinent part as follows:

Every license expires annually. . . . A licensee who fails to renew the license on or before the due date may not sell, purchase or otherwise deal in spirituous liquor until the license is renewed. A license which is not renewed within sixty days after the due date is deemed terminated. The superintendent may renew the terminated license if good cause is shown by the licensee. . . .

Your question concerning the annual license renewal raises two issues. The first is whether the act of renewing a license annually precludes the Board from considering the inactivity of the license prior to the renewal. This issue was also raised in Poulos. The licensee contended that each year must be considered separately, and that the Board can only consider the time since the last annual renewal to determine whether the six months' non-use period had elapsed. The court rejected this argument, and concluded that the renewal statute, A.R.S. § 4-209, is for fee purposes only and is not related to the issue of use. Poulos, 112 Ariz. at 122, 539 P.2d at 396. Thus, the annual renewal requirement does not stop the running of the non-use period described in A.R.S. § 4-203(J).

The second issue raised by your question is whether a license renewal granted pursuant to A.R.S. § 4-209(A) may suspend or preclude the Board's authority to grant extensions pursuant to A.R.S. § 4-203(J). A primary rule of statutory construction is that statutes must be construed together to give effect to all their provisions. Prairie State Bank v. Internal Revenue Service, 155 Ariz. 219, 224, 745 P.2d 966, 971 (App. 1987). As the court noted in Poulos, sections 4-203(J) and 4-209(A) serve different purposes. Therefore, compliance with one of the statutes does not give effect to the purposes of the other. Consequently, we conclude that a licensee must request an extension of time pursuant to A.R.S. § 4-203(J) if the license will not be placed into use within six months, and that the licensee also must renew and maintain the license in accordance with A.R.S. § 4-209.

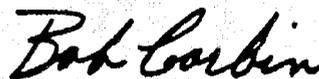
Finally, you asked whether matters involving ownership of a license, such as bankruptcy, ownership disputes, probate

proceedings or litigation, affect the Board's authority to grant additional time, and whether a person other than the licensee, such as a trustee, creditor, transferee, personal representative or other person claiming an interest in the license may have standing to request additional time, and whether the Board may grant additional time based on that request. The answer to this question is essentially found within the language of A.R.S. § 4-203(J). The statute permits the Board to grant additional time "if, in its judgment, the licensee is in good faith attempting to comply with [the] subsection." As a state agency, the Board only has those powers which it is expressly granted by statute. Ayala v. Hill, 136 Ariz. 88, 90, 664 P.2d 238, 240 (App. 1983). Therefore, the only criterion for determining whether to grant the extension is whether the licensee is making a good faith effort to put the license into use. However, this does not preclude persons who claim an interest in the license from requesting the extension of time.

The Arizona Supreme Court has held that a liquor license may be a property right as between the licensee and third persons, even if it is not a property "right" against the state. Black v. Siler, 96 Ariz. 102, 105, 392 P.2d 572, 574 (1964); Hooper v. Duncan, 95 Ariz. 305, 389 P.2d 706 (1964). Thus, a person other than the licensee may have an interest in requesting an extension of time to place a license into use. Because the statute is silent with respect to who may request an extension, we will not read into the statute a requirement that only the licensee may make the request. However, we conclude that the Board's function is limited to determining whether the criterion of § 4-203(J) is met, i.e., whether the licensee is in good faith attempting to put the license into use. The occurrences you mention, such as bankruptcy, probate, and litigation, may affect the Board's determination on this point.

In summary, A.R.S. § 4-203(J) imposes a duty on a licensee or other person claiming an interest in a liquor license to make the request for additional time prior to six months of non-use. Also, the Board may not excuse, for any reason, the failure of any person to make such a timely request. We further conclude that A.R.S. § 4-209(A) does not affect the application of A.R.S. § 4-203(J). Finally, we conclude that persons with an interest in the license may request additional time pursuant to § 4-203(J), but the Board may only grant an extension under the one condition provided therein.

Sincerely,



ROBERT K. CORBIN
Attorney General