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September 24, 2015

The Honorable Bill Ferguson
401 Miller Senate Building
Annapolis, Maryland 21401-1991

Dear Senator Ferguson:

You have asked for advice concerning whether a local jurisdiction could create a property right in a liquor license. It is my view that it is not within the power of local jurisdictions to create a property right in a liquor license.

As you have pointed out, Article 2B, § 10-501(a) provides:

Except as otherwise provided under this section, licenses issued under provisions of this article shall not be regarded as property or as conferring any property rights. All such licenses shall be subject to suspension, restriction, or revocation, and to all rules and regulations that may be adopted as herein provided.

This principle has been recognized repeatedly by the Court of Appeals, *Dundalk Liquor Co. v. Tawes*, 201 Md. 58, 65 (1952); *Herman v. Mayor and City Council of Baltimore*, 189 Md. 191, 199 (1947); *Federico v. Bratten*, 181 Md. 507, 510 (1943); *Abramson v. State*, 167 Md. 531, 533-34 (1934), as well as in 43 *Opinions of the Attorney General* 83, 84 (1958). In *Dodds v. Shamer*, 339 Md. 540 (1995), the Court of Appeals described this provision as “establish[ing] that the State’s plenary power to control the sale of liquor predominates over any ‘right’ in the liquor license that a licensee might seek to assert against the State or the State authorized liquor licensing authority.” *Id.* at 545. Thus, the Court concluded that a liquor license is property in some senses and thus is subject to a writ of execution.¹ *Id.* at 557. The purchaser of such a license, however, is subject to approval by the Board of License Commissioners and has no more rights against the State than did the original owner. 43 *Opinions of the Attorney General* 83, 84 (1958).

An alcoholic beverages license is a State license, created by State law, and administered by Boards of License Commissioners that are created by State law and are considered State agencies

¹ In some counties, the General Assembly has expressly provided that alcoholic beverages licenses are not subject to a writ of execution for some purposes. See Article 2B, § 10-501(b) through (f).

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for most purposes. An attempt to create a property right in an alcoholic beverages license would be directly contrary to the provisions of State law and thus preempted. *Worton Creek Marina v. Clagett*, 381 Md. 499, 514 (2004). Even if that were not the case, the State has so comprehensively regulated the field of alcoholic beverages to make the intent to “occupy the field” and preempt local regulation clear. *Cf., Altadis U.S.A. v. Prince George’s County*, 431 Md. 307, 311-316 (2013) (tobacco packaging regulation preempted by State law), as is also shown by the second section of Chapter 2, Laws of the Special Session of 1933 (enacting Article 2B), which repealed an entire list of public local laws governing alcoholic beverages, as well as “all other laws or parts of law, whether general or local, inconsistent with the provisions of this Act.” All of these factors make clear that a local jurisdiction cannot create a right in an alcoholic beverages license contrary to State law.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

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