

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE CHANCELLOR
200 CALIFORNIA HALL #1500

BERKELEY, CA 94720-1500

DA 0554


February 5, 2004

CHIEF OF POLICE and EXECUTIVE DIRECTOR, PUBLIC SAFETY AND
TRANSPORTATION
Victoria Harrison

Re: Delegation of Authority 0554 - *University Approval of Liquor
Licenses for Campus Facilities*

Effective effectively, I am redelegating DA 0554 to you as Chief of Police and the Executive Director, Public Safety and Transportation. You are authorized to submit directly to the State Department of Alcoholic Beverage Control (ABC) statements on behalf of organizations applying for licenses to serve liquor on University-owned campus premises.

Please contact Cindy Major in the Chancellor's Communication and Resource Center at 642-3115 or via email at cmajor@uclink4.berkeley.edu with any concerns you may have regarding this delegation of authority.


Horace Mitchell
Vice Chancellor - Business and
Administrative Services

Attachments

cc: Vice President J. Mullinix
General Counsel James Holst
Secretary Leigh Trivette
Special Assistant Jeanne Gardner
Associate Chancellor John Cummins
Manager Susan Combs

UNIVERSITY OF CALIFORNIA, BERKELEY

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SANTA BARBARA • SANTA CRUZ

OFFICE OF THE CHANCELLOR
200 CALIFORNIA HALL # 1500

BERKELEY, CA 94720-1500

DA 0554


November 30, 1999

VICE CHANCELLOR HORACE MITCHELL

Re: Delegation of Authority - University Approval of Liquor Licenses for Campus Facilities

Effective immediately, I am re delegating DA 0554 to you as Vice Chancellor of Business and Administrative Services. You are authorized to submit directly to the State Department of Alcoholic Beverage Control (ABC) statements on behalf of organizations applying for licenses to serve liquor on University-owned campus premises.

Please contact Manager Susan Combs in the Chancellor's Communications and Resource Center at 643-7311 or via email at scombs@uclink4.berkeley.edu with any concerns you may have regarding this delegation of authority.


Robert M. Berdahl
Chancellor

Enclosures

cc: Vice President V. Wayne Kennedy
General Counsel James Holst
Secretary Leigh Trivette
Special Assistant Jeanne Gardner
Assistant Chancellor John Cummins
Manager Susan Combs

UNIVERSITY OF CALIFORNIA SYSTEMWIDE ADMINISTRATION

058

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ



Vice President--
Business & Finance

1/5 TO FARM Larry Cunningham:
Need your comment
on this - Ted

RECEIVED BY
CHANCELLOR'S OFFICE
FILED 3/23/77
FILED
MES

BERKELEY, CALIFORNIA 94720

March 21, 1977

CLLS
RFIC
CHANCELLORS
DIRECTOR BATZEL
DIRECTOR SESSLER

Subject: Procedures for State Approval of Liquor Licenses for
Campus Facilities

Dear Colleagues:

In President Saxon's letter of January 10, 1977, he delegated to each of you authority to submit, directly to the State, written statements on behalf of on-campus liquor license applications. He stated further that I would work out new procedures with the State Department of Alcoholic Beverage Control (ABC) and advise you of them. [Recently we received confirmation of the new procedures from Mr. George P. Reece, Deputy Director of the Department.] A copy of his letter of February 18, 1977, is attached for your reference. Briefly, the procedure will be as follows:

- a. Applications for alcoholic beverage licenses, accompanied by a written recommendation from the Chancellor or Laboratory Director, may now be sent to the local office of the State Department of Alcoholic Beverage Control.
- b. The letter of recommendation should identify the name(s) of the true party in interest to be licensed, the specific location, and type of license. If the application is for a daily license or catering authorization, the letter should also indicate the dates and hours authorized. It will not be necessary, as was heretofore required, to provide a written statement setting forth the reasons why issuance of the license would be in the public interest.

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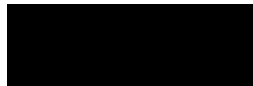
Mr. Reece also advises that licensees using your facilities should be required to maintain adequate liquor liability insurance coverage. In the future I suggest that you consult with your campus/laboratory insurance and risk management coordinator regarding this matter before recommending approval of license applications.

INTERNAL CORRESPONDENCE

Chancellors
Director Batzel
Director Sessler
March 21, 1977
Page Two

The procedures contained in this letter will be incorporated into the revised Policy on Sale and Service of Alcoholic Beverages On or Near University Campuses, which will be issued in the near future. Until such time as the revised policy is issued, you may direct your questions, depending on their nature, either to the local field office of the ABC or to my office, to the attention of Assistant Vice President Owens.

Sincerely,



John A. Perkins

Attachments

cc: President Saxon
Members, President's Administrative Council
Special Assistant Brugger
Principal Officers of The Regents
Deputy Director Reece

1.	HK
2.	HC 3/31
3.	
4.	Return to Chancellor's File

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

O STREET, SACRAMENTO 95814

(916) 445-4265

FEB 22 1977	
100	
JA	

100-10-5
200-10

February 18, 1977

Mr. Mark Owens, Jr.
Assistant Vice President and
Director, Business Affairs
University of California
Berkeley, California 94720

Dear Mark:

Please excuse the delay in getting back to you, but I wanted to touch bases with all concerned first.

We have modified our policy so that all field offices may accept applications for alcoholic beverage licenses when accompanied by a written recommendation from the official in charge of the campus involved.

The letter of recommendation should identify the name(s) of the true party in interest to be licensed, the specific location and type of license. If the application is for a daily license or catering authorization, the letter should also indicate the dates and hours authorized.

I have taken the liberty of making some suggested changes in your internal correspondence, as we do not require a statement setting forth the reasons why issuance would be in the public interest.

Although it does not have a bearing on our issuing licenses at this moment, something that the University should take into consideration is the growing number of claims, settlements and judgments in liquor liability cases. In 1971, the Vesley v Sager case overturned Cole v Rush and ruled that licensees were liable in third party law suits. In 1976, Stacy v Melting Pot Restaurant, James Stacy was awarded \$1.9 million. It would seem to me that you would want to require all licensees using your facilities to have adequate liquor liability coverage. If you decide to require such coverage, have your people check the policy closely, as many brokers exclude liquor liability in the usual liability policies.

Sincerely,


GEORGE P. REECE
Deputy Director

GPR:mm
Attachment

DELEGATION OF AUTHORITY

Title: University Approval of Liquor Licenses for
Campus Facilities

Authority Delegated to: Chancellors

Source of Delegation: Saxon letter of January 10, 1977

Effective Date of Delegation: January 10, 1977

Delegation

". . . University policy states that "no individual, group, or campus acting in the name of The Regents or in the name of the University may apply for a license to engage in the sale of any alcoholic beverage, including beer." This prohibition is pursuant to the State constitution which prohibits any State agency, including the University, from being licensed to sell alcoholic beverages. Therefore, any license to provide or sell alcoholic beverages on a campus must be issued in the name of an organization such as a faculty club, food service vendor, alumni group, or other independent entity."



Office of the President

BERKELEY, CALIFORNIA 94720

January 10, 1977

CHANCELLORS
DIRECTOR BATZEL
DIRECTOR SESSLER

Delegation of Authority--University Approval of Liquor Licenses for Campus Facilities

Effective immediately, you are hereby delegated authority to submit directly to the State Department of Alcoholic Beverage Control (ABC) statements on behalf of organizations applying for licenses to serve liquor on University-owned campus premises.

Pursuant to the requirements of the California Business and Professions Code, Section 23824,

" . . . a written request that the License be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest"

are both required before issuance of any license for an organization operating on University premises. This includes both applications for the special one-day liquor license when required for social events on your campuses and for regular licenses for faculty clubs or bona fide eating facilities.

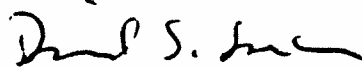
University policy states that "no individual, group, or campus acting in the name of The Regents or in the name of the University may apply for a license to engage in the sale of any alcoholic beverage, including beer." This prohibition is pursuant to the State constitution which prohibits any State agency, including the University, from being licensed to sell alcoholic beverages. Therefore, any license to provide or sell alcoholic beverages on a campus must be issued in the name of an organization such as a faculty club, food service vendor, alumni group, or other independent entity.

INTERNAL CORRESPONDENCE

Chancellors , et al

Page Two

I have asked the Vice President--Business and Finance to work out all necessary procedures with the State Department of Alcoholic Beverage Control and to issue any additional instructions that may be necessary. The University policy statement, "Sale and Service of Alcoholic Beverages on or Near University Campuses," dated May 21, 1969, is in the process of revision to incorporate certain changes in applicable State laws. As soon as review has been completed, a revised policy will be issued. Until such time, questions concerning the approval of liquor licenses for campus facilities should be directed to General Counsel.



David S. Saxon
President

cc: Members, President's Administrative Council
Special Assistant Brugger
Principal Officers of The Regents

Ast. President -- C & R

FEB 19 1970

' same subject '

BERKELEY

February 6, 1974

F
YAD

RECEIVED BY	
PRESIDENT'S OFFICE	
FEB 7 1974	
ML	
FEB	27

CHANCELLORS

Re: Sale and Service of Alcoholic Beverages On or Near University Campuses - Faculty Clubs

Reference is made to former Vice President Oswald's memorandum of May 21, 1969, to Chancellors concerning the above subject, and more particularly the summary of applicable California laws prepared by this office which accompanied that memorandum.

The purpose of this memorandum is to advise you of recent changes in the law which have the effect of relaxing the requirements for issuance of liquor licenses to faculty clubs, at least on the Berkeley, Davis, Los Angeles, Riverside and Santa Barbara campuses where the requirements are the most strict. Because of other provisions of the Penal Code, the existing lesser requirements for liquor licenses for faculty clubs at Irvine, San Diego, San Francisco and Santa Cruz remain unchanged.

Unfortunately, what should be a simple and straightforward matter is covered in a number of complex and interrelated statutes contained in the California Penal Code and Business and Professions Code. Simply stated, the recent change in the law (which became effective January 1, 1974) is an amendment of Penal Code Section 172e, which does two things: it reduces the number of members which a club must have from 750 to 300 and it reduces the number of years which a club must have been in existence from thirty-five to five years. Notwithstanding the five year existence requirement set forth in Section 172e, it appears that the requirement will, as a practical matter, be ten years since Business and Professions Code Section 23428.9 requires that the club have operated a clubroom for members for not less than ten years.

mm

Since the provisions of Penal Code Section 172a apply only to the Berkeley, Davis, Los Angeles, Riverside and Santa Barbara campuses, this amendment has application only to clubs on or near those campuses. The requirements for clubs located on or near the other campuses (Irvine, San Diego, San Francisco, and Santa Cruz) are not changed but they have been less restrictive. For example, clubs located at those campuses need have a membership of only 100.

The following is a brief summary of the faculty club license requirements now in effect. It supersedes the summary set forth in Section B of the summary of California laws attached to Vice President Oswald's memorandum of May 21, 1969:

License Requirements for Faculty Clubs

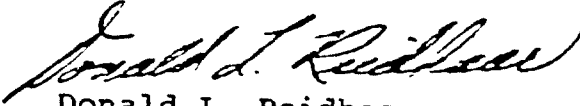
1. Clubs whose premises are located within the restricted zones on and surrounding the Berkeley, Davis, Los Angeles, Riverside and Santa Barbara campuses may qualify for a club license, which would allow them to sell wine and distilled spirits, if they meet each of these requirements:
 - a. Must have been in existence for not less than 5 years.
 - b. Must have a membership of 300 or more.
 - c. Must be a non-profit social group which has operated a clubroom(s) for its members for not less than 10 years.
 - d. Must serve meals daily to its members.
 - e. Must have individual annual dues of not less than \$50.
2. Clubs located on or adjacent to the Irvine, San Diego, San Francisco and Santa Cruz campuses need meet only the following club requirements:

Chancellors
February 6, 1974

3.

- a. Must have a membership of 100 or more.
- b. Must be a non-profit social group which has operated a clubroom(s) for its members for no less than 10 years.
- c. Must serve meals daily to its members.
- d. Must have individual annual dues of not less than \$50.

Please let me know if this office may be of further assistance with regard to this matter.


Donald L. Reidhaar
General Counsel

cc: President Hitch
Vice President McCorkle ✓
Vice President Michael
Vice President Perkins
Treasurer Hammond
Secretary Woolman

100 2-9V 122A

83

May 21, 1969

CHANCELLORS:

F
XAD

Re: Sale and Service of Alcoholic Beverages On or Near University Campuses

The attached summary of laws is being distributed to enable you to ensure that campus policies and practices concerning the use of alcoholic beverages are consistent with present legal restrictions and license requirements. The summary was prepared in consultation with General Counsel, who should be consulted regarding any proposed campus practice for which the appropriate course of action is unclear.

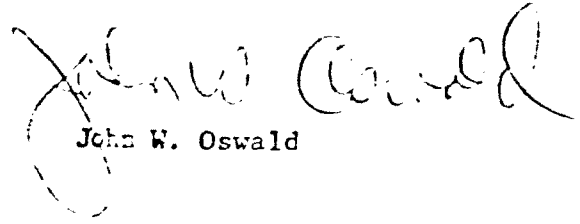
Also enclosed are more exhaustive reviews of pertinent legal provisions on this matter which were issued by the General Counsel on January 17, 1966 and January 21, 1969.

Your particular attention is called to the importance of observing the following restrictions which are imposed on campus facilities, on-campus faculty clubs, and other organizations by the statutes which are summarized on the attached enclosure:

1. No individual, group, or campus acting in the name of The Regents or in the name of the University may apply for a license to engage in the sale of any alcoholic beverage, including beer.
2. Faculty clubs, as separately chartered organizations, may apply for an on-sale beer license without the need to comply with the club licensing requirements applicable to the sale of wine and distilled spirits.
3. A general club license must be obtained before a faculty club can engage in the sale of wine or spirits. (Less restrictive requirements apply to clubs located on the Irvine, San Diego, San Francisco, and Santa Cruz campuses than are applicable to the other five campuses.)
4. The regular service of alcoholic beverages, including the provision of bottle lockers, mixes, ice, or glassware, in unlicensed faculty clubs, or campus organized faculty or student lounges is prohibited.
5. The furnishing or sale of any alcoholic beverage to anyone under 21 years of age within any University owned or operated facility is prohibited.
6. The service of alcoholic beverages is permissible^{ible} at occasional special events sponsored by a campus or campus faculty club to groups exclusively 21 years of age or older. However, no sale of such beverages, as

distinguished from free service, may take place at the special event without the prior issuance of an appropriate alcoholic beverage license. The sale of alcoholic beverages by an appropriately licensed caterer in conjunction with a bona fide catered meal would fulfill the license requirements.

Please ensure that campus practices for controlling the use of alcoholic beverages are consistent with the prescribed requirements and limitations.

A handwritten signature in dark ink, appearing to read "John W. Oswald", is written over a faint circular stamp or watermark.

John W. Oswald

Attachments

cc: Administrative Officers, Office of the President
Principal Officers of The Regents

SALE AND SERVICE OF ALCOHOLIC BEVERAGES

The following is a summary of California laws concerning the sale and service of alcoholic beverages on or near the University of California campuses.

A. Restrictions and License Requirements

1. Alcoholic beverages, including beer, cannot be sold anywhere within California without first obtaining a license from the State Department of Alcoholic Beverage Control.
2. With the exception of the sale of beer, no license may be issued, other than to clubs meeting specified statutory requirements and public eating places, to sell intoxicating liquors within:
 - a. One mile of the Berkeley, Riverside and Santa Barbara campuses.
 - b. One and one-half miles of the Los Angeles campus.
 - c. Three miles of the Davis campus.
3. No minimum distance restrictions apply to the Irvine, San Diego, San Francisco, and Santa Cruz campuses.
4. Clubs meeting the statutory requirements and public eating places may be licensed if they meet all licensing requirements even though located within the above distances.
5. The Regents of the University of California, as an agency of the State of California, may not engage in the sale of alcoholic beverages.

B. License Requirements for Faculty Clubs

1. Clubs whose premises are located within the restricted zones on and surrounding the Berkeley, Davis, Los Angeles, Riverside, and Santa Barbara campuses may qualify for a club license, which would allow them to sell wine and distilled spirits, if they meet each of these requirements:
 - a. Must have been in existence for not less than 35 years.
 - b. Must have a membership of 750 or more.
 - c. Must be a non-profit social group which has operated a club room(s) for its members for not less than 10 years.
 - d. Must serve daily meals to its members.
 - e. Must have individual annual dues of not less than \$50.

*Section E.
superseded
2/6/74. See
memo of that
date.*

2. Clubs located on or adjacent to the Irvine, San Diego, San Francisco, and Santa Cruz campuses need meet only the following club requirements:

- a. Must have a membership of 100 or more.
- b. Must be a non-profit social group which has operated a club room(s) for its members for no less than 10 years.
- c. Must serve daily meals to its members.
- d. Must have individual annual dues of not less than \$50.

C. Sale of Beer

1. The above club licensing requirements do not have to be satisfied in order to obtain an on-sale beer license.
2. The possession of a beer license creates a concurrent prohibition on the storage or consumption of wine and/or distilled spirits on the licensed premises.

D. Minimum Age

The sale, furnishing, or giving of any alcoholic beverages to anyone under 21 years of age is prohibited. Both the supplier and the purchaser and/or consumer under these circumstances would be guilty of a misdemeanor.

E. Consumption on Unlicensed Premises

The provision of any type of an unlicensed clubroom for drinking purposes is proscribed by the Business and Professions Code. The following activities are included under this "public nuisance" statute:

- a. Maintenance of a clubroom where any alcoholic beverage is brought or kept for consumption on the premises on a regular basis.
- b. Operating any unlicensed facility as a place for the providing of alcoholic beverages for a "consideration", which includes:
 - (1) Sale of food, ice, or mixes used with alcoholic beverages.
 - (2) Furnishing of glassware.
 - (3) A cover charge.

F. Caterers

The holder of a license who has obtained a caterer's permit may sell alcoholic beverages on or near a campus in connection with the caterer's serving of bona fide meals.

G. The Effects of These Laws on the University

1. No individual, group, or campus acting in the name of The Regents or in the name of the University may apply for a license to engage in the sale of any alcoholic beverage, including beer.
2. Faculty clubs, as separately chartered organizations, may apply for an on-sale beer license without the need to comply with the club licensing requirements applicable to the sale of wine and distilled spirits.
3. A general club license must be obtained before a faculty club can engage in the sale of wine or spirits. (Less restrictive requirements apply to clubs located on the Irvine, San Diego, San Francisco, and Santa Cruz campuses than are applicable to the other five campuses.)
4. The regular service of alcoholic beverages, including the provision of bottle lockers, mixes, ice, or glassware, in unlicensed faculty clubs, or campus organized faculty or student lounges is prohibited.
5. The furnishing or sale of any alcoholic beverage to anyone under 21 years of age within any University owned or operated facility is prohibited.
6. The service of alcoholic beverages is permissible at occasional special events sponsored by a campus or campus faculty club to groups exclusively 21 years of age or older. However, no sale of such beverages, as distinguished from free service, may take place at the special event without the prior issuance of an appropriate alcoholic beverage license. The sale of alcoholic beverages by an appropriately licensed caterer in conjunction with a bona fide catered meal would fulfill the license requirement.

January 21, 1969

CHANCELLOR DANIEL G. ALDRICH, JR.
Irvine

CHANCELLOR WILLIAM J. MCGILL
San Diego

CHANCELLOR WILLARD C. FLEMING
San Francisco

CHANCELLOR DEAN E. McHENRY
Santa Cruz

Re: Sale and Serving of Alcoholic Beverages
On or Near University Campuses - Recent
Developments

You will recall that on January 17, 1966, I furnished to all Chancellors a memorandum (copy enclosed) discussing in some detail the legal restrictions on the sale and serving of alcoholic beverages on or near campuses of the University. That memorandum indicated that with certain exceptions (principally clubs meeting stringent statutory requirements and bona fide public eating places) the general rule is that no licenses can be issued to sell alcoholic beverages, other than beer, within one and one-half miles of your campuses. That opinion was based upon Penal Code section 172a which, subject to the exceptions previously noted, prohibits the sale of alcoholic beverages within one and one-half miles of the campus of any university which has an enrollment in excess of 1000 students, more than 500 of whom reside upon the campus.*

In 1965 Penal Code section 172h was enacted creating a further exception to the statutes prohibiting the sale of alcoholic beverages on or near university campuses. It reads as follows:

"The provisions of Sections 172, 172a, 172b, 172d and 172g of this code shall not be applied to prohibit the sale or the exposing or offering for sale of any intoxicating liquor in, or the

*Santa Cruz was not mentioned in that memorandum since it did not then have an enrollment in excess of 1000 students, with more than 500 students residing on campus.

Chancellor Daniel G. Aldrich, Jr.
Chancellor William J. McGill
Chancellor Willard C. Fleming
Chancellor Dean E. McHenry
January 21, 1969

2.

issuance of an alcoholic beverage license for, any premises because a university has constructed and occupied since January 1, 1960, or in the future constructs, dormitories for its students which has resulted or results in the premises being prohibited by the foregoing sections from selling, exposing or offering such liquor for sale because the premises are or become thereby within the area prescribed by these sections."

While the intended meaning of section 172h was not entirely clear, it appeared that it was intended to codify the rule of a 1963 case (Walsh v. Department of Alcoholic Beverage Control (1963) 59 Cal. 2d 757) holding that the University's construction of dormitories outside the traditional boundaries of the Berkeley campus did not have the effect of extending the "campus" and thus expanding the zone around the campus in which alcoholic beverages cannot be sold. That was the construction placed upon section 172h by the Continuing Education of the Bar (Review of Selected 1965 Code Legislation (Cont. Ed. Bar 1965) p. 174) and by this office. However, in a very recent case involving an application for a license of premises located near San Diego State College (Scott Memorial Baptist Church v. Department of Alcoholic Beverage Control (1968) 260 A.C.A. 106), The California Court of Appeal placed quite a different construction upon section 172h. It construed section 172h as providing that if a "university" did not have an enrollment in excess of 1000 students, more than 500 of whom resided on the campus, on or prior to January 1, 1960, it and the surrounding area would be excluded from the operation of section 172a (prohibiting the sale of alcoholic beverages within one and one-half miles of the campus) even though it subsequently has an enrollment in excess of 1000 students, more than 500 of whom reside on the campus.

Although the Scott Memorial Baptist Church decision may have misconstrued the intended meaning of section 172h, still, the case sets forth the present law on this point. Accordingly, it may have implications for your campuses both (1) as to the issuance of licenses for the sale of alcoholic

Chancellor Daniel G. Aldrich, Jr.
Chancellor William J. McGill
Chancellor Willard C. Fleming
Chancellor Dean E. McHenry
January 21, 1969

3.

beverages to premises near the campus and (2) issuance of licenses to premises such as faculty clubs on the campus. The Scott Memorial Baptist Church case has no application to the other five campuses of the University since each of them is specifically named in the statutes prohibiting the sale of alcoholic beverages on or near the campuses.

With respect to licenses for premises near the campus, if the rule of the Scott Memorial Baptist Church case is applied, such licenses can be applied for and granted provided that the applicant meets general licensing requirements. Principal among these are that issuance of the license not be "contrary to public welfare or morals" (Cal. Const., art XX, §22), that the applicant has not been convicted of an offense involving moral turpitude (Cal. Const., art. XX, §22) and that issuance of the license would not result in an undue concentration of licenses (Bus. & Prof. Code, §§23815-23816).*

With regard to licenses for premises located on the campus, even if the rule of the Scott Memorial Baptist Church case is applied, licenses cannot be applied for or granted in the name of The Regents or in the name of the University since the Constitution specifies that ". . . the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages." (Cal. Const., art. XX, §22.) To the extent University policy permits, faculty clubs may apply for licenses for their premises located on the campus. If the rule of the Scott Memorial Baptist Church case is applied, it would no longer be required that the club have been in existence for not less than 35 years and that the club have at least 750 members (Pen. Code, §172e), but still, the club could qualify only if it (1) has more than 100 members, (2) daily serves

*A special situation obtains at San Francisco because of the provision of Penal Code §172a that "any license issued and in effect in the City and County of San Francisco on the effective date of the amendment of this section enacted at the 1961 Regular Session of the Legislature may be transferred to any location in the City and County of San Francisco."

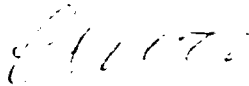
April 19, 1974

CHANCELLORS

Gentlemen:

I send attached for your information General Counsel Reidhaar's letter and attachments of April 8 to me about beer licenses for campus student facilities which I think you will find useful.

Sincerely,



Charles J. Hitch

cc: General Counsel Reidhaar

Attachments

April 8, 1974

PRESIDENT CHARLES J. HITCH

Re: Beer Licenses for Campus Student Facilities

Dear Charlie:

As a result of an inquiry from the Los Angeles Campus and the continuing occasional interest in the possibility of campus student facilities being licensed to sell beer, this Office recently has made inquiry of the Northern Division Office of the Department of Alcoholic Beverage Control as to the circumstances of the issuance of a beer license for the "Fog 'n Grog" in the University Center Building on the campus of the University of San Francisco.

We have been advised that the license was issued to Slater Corporation, an independent food service contractor, following negotiations involving the Department, USF, the student association, and Slater Corporation. A copy of the Petition for Conditional License which specifies the conditions required by the Department before it would consider granting a license and which were incorporated in the license actually granted is attached. Issuance of a license to a facility primarily patronized by students even with such stringent conditions as those set forth represents a substantial departure from the former policy of the Department of Alcoholic Beverage Control which consistently had indicated that it would deny any application for a beer license for a facility patronized primarily by students on the basis that issuance of such a license would be contrary to "public welfare and morals".

As a matter of information to the Chancellors, you may wish to forward to them copies of this memorandum and the Slater Corporation Petition for Conditional License. Although we have no indication from the Department of Alcoholic Beverage Control that it would grant a similarly conditioned license for a facility on a University of California campus, it is my view that the Department would have substantial legal difficulty in denying an application predicated on conditions similar to those accepted at USF.

It is important to note that the licensee at USF is an independent contractor. If any license application is to be considered on one of our campuses, the applicant would have to have an independent contractor operating a proposed facility under lease or license from The Regents in view of the provision of the California Constitution that

President Charles J. Hitch
April 8, 1974

2.

" . . . the Legislature [including the Department of Alcoholic Beverage Control] shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages."

This provision prevents granting of a license to The Regents and an associated students organization as well in view of the status of such organizations as official units of the University.

One requirement to which the University would be subject which was not applicable to USF is that set forth in Business and Professions Code Section 23824 providing that prior to the issuance of a license for the sale of alcoholic beverages for

" . . . premises owned by the State, . . . or other public corporation. . . of the State of California. . ."

the governmental agency owning the premises

" . . . shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest."

I believe the most recent situation in which you furnished such a statement was at Chancellor Bowker's request in connection with application for a beer and wine license for the Swallow restaurant in the University Art Museum at Berkeley (copy enclosed).

If you wish to have any further information concerning this matter, please let me know.


Donald L. Reidhaar
General Counsel

Enclosure

cc: Vice President Johnson
Vice President Perkins
Special Assistant A. Brugger

STATE OF CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

In the Matter of the Application of

Slater Corporation
2150 Fulton Street
University Center Building
San Francisco, California
94128

For the issuance of an On-Sale Beer
License, Public Premises

RECEIVED

Division of
Licensing
San Francisco

PETITION FOR CONDITIONAL LICENSE

This Petition for a Conditional License is submitted pursuant to Sections 23800 through 23805 of the Business and Professions Code.

The applicants herein petition the Department of Alcoholic Beverage Control to issue a license conditional upon the following restrictions:

1. The premises will be completely enclosed except for one entrance (other than fire exits).
2. At all times during the operation of the premises there will be stationed at the entrance a responsible adult to prevent the entry of any person under the age of twenty-one.
3. Every person entering the premises will be required to show at least two pieces of reliable identification showing age, one of which must have a photograph.
4. A high intensity light will be provided for examination of identification.
5. All students and faculty will be advised of the requirements in advance of the opening of the licensed premises, and no exceptions will be made to the identification requirements as set forth above.
6. The person guarding the door will ensure that no customer removes any beverages from the licensed premises.
7. The premises will be securely locked at all times when not in use.

The applicant certifies that a violation of any of the foregoing conditions may be grounds for the suspension or revocation of the license.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 15th day of December, 1978

SLATER CORPORATION

William Keenan
(Petitioner and Applicant)

January 17, 1966

TO ALL CHANCELLORS

Re: Sale and Serving of Alcoholic Beverages
on or Near the Campuses

During the 1965 Session of the Legislature, certain of the statutes pertaining to the sale and serving of alcoholic beverages on or near the campuses were amended, as I indicated in my memorandum to President Kerr of September 14, 1965, a copy of which was sent to each Chancellor. Questions have arisen recently concerning the possibility of the sale of beer on the campuses as well as the possibility of one or more of the faculty clubs obtaining some type of license to sell alcoholic beverages. Certain aspects of the matter were discussed when Assistant Counsel James E. Holst met with Dean Shepard and the Deans of Students on January 13, 1966. This memorandum is intended to serve as a general statement setting forth the principal provisions of law relating to the subject.

1. In General - Restrictions and License Requirements

Alcoholic beverages, including beer, may be sold or served on the campuses under certain circumstances. In general, the law provides that:

- a. Alcoholic beverages, including beer, cannot be sold anywhere within the State of California without first obtaining a license from the Department of Alcoholic Beverage Control. (California Constitution, Article XX, §22; Business and Professions Code, Sections 23300, 23399.)
- b. Subject to certain exceptions which are discussed below, no license may be obtained to sell intoxicating liquors within:
 - (1) One and one-half miles of the Los Angeles, San Diego, Irvine and San Francisco campuses;
 - (2) Three miles of the Davis campus; and
 - (3) One mile of the Berkeley, Santa Barbara and Riverside campuses.

Penal Code Sections 172, 172a, 172b and 172d provide, in part, that it is a misdemeanor to sell or expose for sale any intoxicating liquor within the specified distances of the above-mentioned campuses. At present there is no legal prohibition against the selling or exposing for sale of liquor on or near the Santa Cruz campus. Sale or exposure for sale of intoxicating liquor within one and a half miles of that campus will be prohibited by statute when it has an enrollment of one thousand students, more than one-half of whom reside on the campus.

The exceptions to Penal Code Sections 172, 172a, 172b and 172d are

(1) Beer

The sale of beer, irrespective of alcoholic content, is not subject to the prohibitions of these sections.

(2) Weak Wine

Wine of not more than 3.2% alcohol by weight (or approximately 3.84% by volume) is also not subject to the prohibitions of these sections. This, however, is a meaningless exclusion since all wines exceed this percentage.

(3) Public Eating Places

The Department of Alcoholic Beverage Control may issue a license for premises within the designated zones which are "bona fide public eating places." (Penal Code, Section 172a.) To be a bona fide public eating place, the premises must be engaged in the regular sale of meals to the public with suitable kitchen facilities. (Business and Professions Code, §23038.)

The bona fide public eating place exception apparently would not apply

to most, and perhaps all, University facilities since they are not engaged in serving meals to the general public.

(4) Clubs

The Department of Alcoholic Beverage Control may license premises within the designated zones which qualify for a club license and also meet each of the following conditions:

- (a) The club must have been in existence for not less than 35 years. (Penal Code, Section 172e.)
- (b) The club must have a membership of 750 or more. (Penal Code Section 172e.)
- (c) The club must serve meals daily to its members. (Penal Code Section 172e.)
- (d) The club must be a non-profit social group which has operated a club room or rooms for its membership for a period of not less than 10 years. (Business and Professions Code, Section 23428.9.)
- (e) The club must have regular membership dues of not less than \$50 per year per member. (Business and Professions Code, Section 23428.9.)

(5) Caterers

The Department of Alcoholic Beverage Control may issue a caterer's permit

for the sale of intoxicating liquors within the designated zones. (Penal Code, Section 172e.)

This exception apparently would have no application to University facilities since the caterer's permit may be granted only to a person already holding an on-sale general license, a club license, or a veteran's club license (Business and Professions Code, Section 23399), and can be issued only in connection with serving bona fide meals. (Penal Code, Section 172e.)

- c. The prohibitions of Penal Code, Sections 172, 172a, 172b and 172d apply only to the "selling or exposing for sale" of intoxicating liquors. It does not prohibit the non-sale serving nor the giving away of liquor. As a result, the serving or giving away of liquor on University premises is a matter for regulation by University policy.

2. Sale of Beer on Campus

Beer can be sold on the campus if a license has been issued by the Department of Alcoholic Beverage Control. Such a license has recently been issued to the Men's Faculty Club on the Berkeley campus.

As to the possibility of issuance of a license for the sale of beer in a campus facility other than a faculty club, the policy of the Department of Alcoholic Beverage Control is stated in the following regulation:

"No on-sale general license or on-sale beer and wine license shall be issued within one mile of a university unless the department is satisfied that the location of the premises is sufficiently distant from the campus and the nature of the licensed business is such that it will not be patronized by students."
(IV California Administrative Code, §61.1.)

In view of this provision it would appear that the Department of Alcoholic Beverage Control would be likely to deny a beer license for a student facility, for instance, on the grounds that it would constitute premises "patronized by students" within the meaning of Section 61.1. In this connection, I note that the Department of Alcoholic Beverage Control, in a press release announcing the granting of a beer license to the Men's Faculty Club at Berkeley, stated that any request for a license to sell beer in the Student Union would be denied.

3. Minors

The California Constitution provides:

"The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage."
(Article XX, Section 22.)

Business and Professions Code, Section 25658 provides:

"(a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

"(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100), no part of which shall be suspended.

"(c) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor."

Because of these provisions, the University would be responsible for insuring that no alcoholic beverage, including beer, was sold to persons under the age of 21 if any type of license were issued for any campus.

If a beer license were issued, the premises in question could remain open to persons under the age of 21 years (Business and Professions Code, Section 25665), but no person under the age of 21 could be employed in that portion of the premises primarily designed and used for the sale and service of beer (Business and Professions Code, Section 25663).

4. Faculty Clubs

As noted above, the Men's Faculty Club at Berkeley has obtained a license for the sale of beer. In order to obtain such a license a faculty club does not have to comply with the club requirements set forth in item 1.b. above. If application is made for a license other than for the sale of beer, however, each of the requirements must be satisfied by the club.

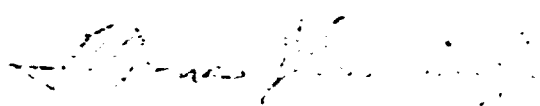
Provision of a clubroom for drinking purposes with facilities for members to store their own alcoholic beverages is proscribed by Business and Professions Code Section 25604, which provides as follows:

"It is a public nuisance for any person to maintain any club room in which any alcoholic beverage is received or kept, or to which any alcoholic beverage is brought, for consumption on the premises by members of the public or of any club, corporation,

To All Chancellors
January 17, 1966
Page 7

or association, unless the person and premises are licensed under this division. It is a public nuisance for any person to keep, maintain, operate or lease any premises for the purpose of providing therein for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons, unless the person and premises are licensed under this division. As used herein 'consideration' includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks."

I am enclosing an extra copy of this memorandum which you may wish to make available to your Dean of Students. Please let me know if you have any questions concerning this matter.



Thomas J. Cunningham
Vice President and
General Counsel

Enclosure

cc: President Clark Kerr ✓
Associate University Dean William Shepard

LICENSING RESTRICTIONS

§ 23824

Ch. 5

uisite increase in population on its own initiative. Id.

Under §§ 23815, 23818, 23822 (repealed), 23823 (repealed), and this section, the state equalization board is not compelled as a matter of right to issue on-sale or off-sale liquor licenses on the basis of an increase in

population, but applicants must meet all the qualifications and there is no compulsion upon the Board to grant additional and new licenses whether the application is presented under § 23816 or under this section. 22 Ops.Atty.Gen. 191.

§§ 23822, 23823. Repealed by Stats.1961, c. 783, p. 2047, §§ 5, 6, eff. June 10, 1961

Historical Note

The repealed §§ 23822, 23823, were added by Stats.1953, c. 152, p. 979, § 1, amended by Stats.1955, c. 447, pp. 909, 910, §§ 56, 57 and were derived from Stats.1935, c. 330, p. 1123, § 38f, as added by Stats.1945, c. 1401, p. 2642, § 33a.

Section 23822 related to the showing required upon an application for an off-sale or

on-sale general license on the ground of increased population.

Section 23823 provided for an investigation of the statements made in the application.

§ 23824. Licensed premises owned by state, municipality, etc., operated as public eating place; civic auditoriums; limitations; exceptions; renewal; transferability; disposition of fees

Limitations provided by Section 23816 on the number of licensed premises shall not apply to premises owned by the State of California, any incorporated city, county, city and county, airport district, or other district or public corporation of the State of California or to premises leased to any city or county, so long as any such premises are operated as a bona fide public eating place, provided, however, that civic auditoriums owned by any incorporated city, county, city and county, or other district or any premises leased to any county or city for use as a civic auditorium and directly operated by a public entity shall be subject to the limitations provided by Section 23816 but shall not be required to be operated as a bona fide public eating place. Such civic auditorium shall further not be subject to the provisions of Section 23793.

Licenses issued on premises owned by the state, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California, or issued on premises leased to any county or city, shall be renewable as set forth in Section 24048.1 or 24048.3. Such licenses shall be excluded from the number of premises used in determining application of the limitations provided by this article. Such licenses shall be subject to the provisions of Section 23954.5 and shall be only transferable from person to person at the same premises. Prior to the issuance of such licenses, the governmental agency owning or the county or city leasing such premises shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest.

A written request filed with the department by the governmental agency owning or the city or county leasing premises used as a civic auditorium and directly operated as a public entity that the license be issued need not contain a written statement setting forth the reasons why issuance of the license would be in the public interest.

Funds derived from fees collected pursuant to the amendments made to this section at the 1975-76 Regular Session of the Legislature shall be deposited in the General Fund.

(Added by Stats.1955, c. 1801, p. 3335, § 1. Amended by Stats.1957, c. 1149, p. 2441, § 3; Stats.1961, c. 533, p. 1635, § 1; Stats.1967, c. 809, p. 2230, § 1; Stats.1976, c. 1021, p. 4602, § 1; Stats.1983, c. 966, § 1, eff. Sept. 21, 1983.)

Historical Note

As originally enacted in 1955 the section read:

"Limitations provided by this article on the number of licensed premises shall not apply to premises owned by the State of California, any incorporated city, county, city and county, airport district, or other district or public corporation of the State of California.

"Licenses issued on premises owned by the State, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California, shall be excluded from the number of premises used in determining application of the limitations provided by this article."

Stats.1955, c. 1801, p. 3336, § 4, which provided that this section should remain in effect until the ninety-first day after final adjournment of the 1957 regular session was repealed by Stats.1957, c. 1149, p. 2440, § 1.

The 1957 amendment added to the second paragraph a second sentence which provided: "Such license shall be exempt from the provisions of Section 23954.5 and shall be nontransferable."

The 1961 amendment substituted "Section 23816" for "this article" and added the words "and operated as a bona fide public eating place" at the end of the first paragraph; and rewrote the second paragraph to read:

"Licenses issued on premises owned by the State, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California,

shall be renewable as set forth in Sections 24048.1 or 24048.3. Such licenses shall be excluded from the number of premises used in determining application of the limitations provided by this article. Such licenses shall be subject to the provisions of Section 23954.5 and shall be only transferable from person to person at the same premises. Prior to the issuance of such licenses, the governmental agency owning such premises shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest."

The 1967 amendment substituted, in the first paragraph, "or to premises leased to any county, so long as any such premises" for "and"; inserted, in second paragraph, in the first sentence, "or issued on premises leased to any county"; and inserted, in the second paragraph in the fourth sentence, "or the county leasing".

The 1976 amendment added the proviso to the first sentence in the first paragraph; added the second sentence to the first paragraph; substituted "county or city" for "county" preceding "shall be renewable" in the first sentence of the second paragraph; and added the third and fourth paragraphs.

The 1983 amendment inserted "city or" following "premises leased to any" in the first sentence in the first paragraph; inserted "or city" following "agency owning or the county" in the fourth sentence in the second paragraph; and inserted "city or" following "agency owning or the" in the third paragraph.

Cross References

Fee accompanying application, see § 23954.5.

Administrative Code References

Sublease of premises for food service, see 4 Cal. Adm. Code 57.8.

Library References

Intoxicating Liquors ⇐46½.
C.J.S. Intoxicating Liquors § 103.

Notes of Decisions

1. In general

In considering the issuance of license under this section, the department of alcoholic beverage control is not required to issue the license merely because the premises are governmentally owned. 34 Ops.Atty.Gen. 208.

Any on-sale or off-sale general license issued in accordance with the provisions of this section, is automatically terminated if the licensed premises is no longer owned by a governmental agency. Id.

Department of Alcoholic Beverage Control may give consideration to an application for a license to be issued on governmentally owned premises in the same manner that it would give consideration to an application for a license to be issued on privately owned premises, except that it may not deny the license solely because the issuance of the same would be in excess of the permissible licenses based upon population and may demand the payment of the application fee set forth in § 23954.5. Id.

§ 23825. Onsale general license defined

As used in this article, "onsale general license" includes a special onsale general license; provided, that the limitation prescribed in Section 23816 shall not prohibit the exchange of an onsale general license for a special onsale general license, or the exchange of a special onsale general license for an onsale general license.

(Added by Stats.1961, c. 1914, p. 4034, § 3. Amended by Stats.1963, c. 785, p. 1812, § 1.)

Historical Note

The 1963 amendment inserted "or the exchange of a special onsale general license for an onsale general license."

Library References

Intoxicating Liquors ⇐44.
C.J.S. Intoxicating Liquors § 90.

Notes of Decisions

1. In general

General on-sale liquor license is "property" within Civ.C. §§ 654, 655, defining prop-

erty and things subject to ownership. Golden v. State (1955) 285 P.2d 49, 133 C.A.2d 640.

§ 23826. Counties with less than 2,500 inhabitants; additional license

Notwithstanding any other provision of this chapter, in any county where the inhabitants number less than 2,500 and where on July 1 of any calendar year there exists in any such county none or only one on-sale general license and none or only one off-sale general license the department may issue one additional original on-sale general license and one