

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

IN RE:

PETITION FOR DECLARATORY STATEMENT
TO THE DEPARTMENT OF ALCOHOLIC
BEVERAGES AND TOBACCO

DS 2011-019

On behalf of BOTTLE CLUB, LLC,
d/b/a EYZ WIDE SHUT II

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (hereinafter "Division") issues this Order Denying Petition for Declaratory Statement pursuant to section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

On December 9, 2010, the Division received a Petition for Declaratory Statement on behalf of BOTTLE CLUB, LLC, who currently holds alcoholic beverage license number 39-00167 located in Tampa, FL. Petitioner seeks an opinion on whether it can daily cease operation of its 4-COP license, then operate a bottle club license at the same location for the duration of the 4-COP license's closure.

Shortly after receiving the petition, the Division contacted BOTTLE CLUB and advised it as to the numerous procedural deficiencies found therein. As a result, BOTTLE CLUB submitted a formal request to withdraw petition on January 21, 2011, and submitted an amended petition on the same day.

Notice of receipt of the petition was published in Florida Administrative Weekly on March 18, 2011.

The petitioner did not request a hearing.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Petitioner, a Florida corporation, operates as a nightclub doing business in Hillsborough County, Florida. Petitioner is the owner of a 4-COP alcoholic beverage license, and is currently located at 8504 E. Adamo Drive, Suites 150 & 160, Tampa, FL 33619.

2. A court, unspecified in the Petition, has entered a final judgment declaring that “alcoholic special use permit #01-1010 issued by Hillsborough County, Florida, which, in part, allowed a bottle club to be operated in Suite F of that property, remains in full force and effect for Suite F.” Specific details regarding permit #01-1010, the relevant property or ‘Suite F’ are not included in the Petition.

3. Petitioner proposes the following business plan:

Petitioner BOTTLE CLUB currently owns and operates a 4-COP license. Petitioner will close its establishment at a pre-determined time, and after the 4-COP license closes, a bottle club will open at the same location.

All alcohol from the 4-COP license would be stored and locked in a cabinet, and would not be consumed during the bottle club’s hours of operation. The only alcohol allowed in the bottle club would be that which customers have brought for personal consumption.

4. Petitioner further states that issuance of its permanent license was delayed for five months, and requests clarification of its obligations regarding the requirements Section 561.29(1)(i), Florida Statutes.

CONCLUSIONS OF LAW

5. The Division has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08, 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapter 561, Florida Statutes.

6. By holding an alcoholic beverage license, Petitioner is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

7. Section 120.565, Florida Statutes, provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set or circumstances.

8. Rule 28-105.001, Florida Administrative Code (2007), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

9. Rule 28-105.002, Florida Administrative Code (2007), provides:

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information: [...] (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought. (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

10. Petitioner has failed to state with particularity the Petitioner's relevant set of circumstances, as required in Section 120.565(2), Florida Statutes. Specifically, the Petitioner fails to specify any and all details regarding the alleged final judgment on alcoholic special use permit #01-1010 and how this impacts the aforementioned circumstances; also, Petitioner fails to adequately state the details of its proposed business plan, specifically with regard to hours of operation and ownership of the licenses.

11. Petitioner has failed to specify the statutory provision, rule, or order that the petitioner believes may apply to its set of circumstances, as required in Section 120.565(2), Florida Statutes. Petitioner makes specific reference to several statutes throughout the Petition, but fails to name any provisions, rules or orders upon which it seeks declaratory statement regarding its plan to operate 4-COP and bottle club licenses on the same premises.

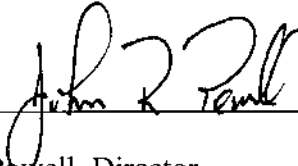
12. Petitioner has failed to provide the statutory provision(s), agency rule(s) or agency order(s) on which the declaratory statement is sought, as required by Rule 28-105.002, Florida Administrative Code. Specifically, Petitioner has failed to provide the provisions, rules or orders upon which it seeks declaratory statement regarding its plan to operate 4-COP and bottle club licenses on the same premises.

13. Petitioner has failed to provide a description of how the aforementioned statutes, rules or orders may substantially affect the petitioner's particular set of circumstances, as required by Rule 28-105.002, Florida Administrative Code. Specifically, Petitioner has failed to provide a description of how the aforementioned statutes, rules or orders upon which it seeks declaratory statement may substantially affect its plan to operate 4-COP and bottle club licenses on the same premises.

For the above stated reasons it is hereby:

ORDERED that Petition for Declaratory Statement is **DENIED**.

Dated this 7 day of April, 2011.

A handwritten signature in black ink, appearing to read "John R. Powell", is written over a horizontal line.


John R. Powell, Director
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH SARAH L. WACHMAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Eyz Wide Shut II, c/o Joshua Harrow, Esq., 105 US Highway 301 S., Suite 110, Tampa, FL 33619 on this 12 day of April, 2011.


Michael W. Ross
Chief Attorney.

DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO

**PETITION FOR DECLARATORY STATEMENT TO DEPARTMENT OF
ALCOHOLIC BEVERAGES AND TOBACCO**

Petitioner, BOTTLE CLUB LLC d/b/a EYZ WIDE SHUT II, ("BOTTLE"), pursuant to §120.565 Fla. Stat., and Rule 28-105, Florida Administrative Code, files this petition for declaratory statement, ("Petition"), to obtain the DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO'S, ("DABT"), opinion on questions set forth by BOTTLE as it applies to their particular set of facts.

"Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested." §120.54(7)(a) Fla. Stat.

DS 2011-019**PARTIES**

1. BOTTLE, a Florida corporation, is a nightclub doing business in Hillsborough County, Florida. They are located at 8504 E. Adamo Drive, Suites 150 & 160, Tampa, FL 33619, and their telephone number is (813) 620-1234. BOTTLE is acting in this matter through its undersigned attorney.

2. The DABT is a governmental organization created by the Laws of Florida, and exists and operates under §561-569 Fla. Stats. Pursuant to §120.565 Fla. Stat., BOTTLE is filing this Petition to clarify particular DABT regulations.

BOTTLE CLUB LLC'S SUBSTANTIAL INTERESTS

3. On August 12, 2010, a final judgment was entered in which the Court held that, "the alcoholic special use permit #01-1010 issued by Hillsborough County, Florida, which, in

part, allowed a bottle club to be operated in Suite F of that property, has been and remains in full force and effect for Suite F from the date permit #01-1010 was approved, September 4, 2001, continuously through to the present time.”

3. Since that final judgment was entered, multiple questions has arisen in regard to zoning and what BOTTLE is permitted to do. On September 7, 2010, BOTTLE, through its attorney, submitted multiple questions to the DABT. These questions involved complicated legal issues, and BOTTLE respectfully requested to obtain an official advisory opinion in regard to those issues. On September 15, 2010, Susan Doherty, Chief, Bureau of Licensing, DABT, informed BOTTLE that the DABT does not render informal or advisory opinions, however, BOTTLE could submit a petition for declaratory statement to the DABT.

4. Petitioner has a substantial interest in obtaining a declaratory statement regarding the questions that BOTTLE submitted to the DABT. The Court has ordered that BOTTLE is permitted to open a bottle club at its current location, and it is in the petitioner's interest to obtain a declaratory statement regarding the questions set forth below.

5. First, BOTTLE is currently under a 4-COP license. That license allows for a full liquor bar. However, BOTTLE now wishes to use the court-ordered bottle club license that was deemed active. In light of that court order, BOTTLE proposes the following business set-up. The 4-COP will close its establishment at pre-determined time, and after the 4-COP closes, a bottle club will open at the same location. The bottle club will be under a different license and different ownership. All the alcohol from the 4-COP would be stored and locked in a cabinet. That alcohol will not be consumed during the bottle club's hours of operation. The only alcohol allowed in the Bottle Club would be alcohol that customers have brought themselves. BOTTLE wishes to know if this set-up is proper under Florida law. If ABT issues a statement that they

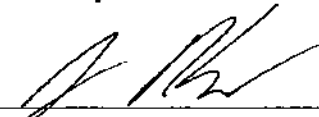
cannot answer this question, then BOTTLE will have to file a supplementary proceeding to bring this matter before the court again, and include ABT as a defendant for interfering with the Court's order.

6. Second, §561.29(1)(i) Fla. Stat., states that a "licensed business" must be open "at least 8 hours a day for a period of 210 days or more during any 12-month period commencing 6 months after the acquisition of the license by the licensee. For unknown reasons, BOTTLE's permanent license was delayed for five months, and it was only issued after BOTTLE's attorney, Michael A. Linsky, P.A., sent a letter to Tallahassee to inquire as to the status of the license. BOTTLE is currently operating, however, it is unclear whether the 210-day rule takes effect six months after receiving its temporary license, or whether the rule takes effect six months after receiving its permanent license.

WHEREFORE, pursuant to §120.54(7)(a) Fla. Stat., BOTTLE respectfully requests that a declaratory statement regarding the DABT's opinion be granted as it pertains to the questions set forth above within 30 days of the date of this petition..

Respectfully submitted this 21st day of January 2011.

Joshua Adam Harrow
Attorney at Law



JOSHUA A. HARROW, ESQ.
105 US Hwy. 301 S.
SUITE 110
Telephone (813) 621-0045
Fax (813) 621-5529
Florida Bar No. 76501

cc: Bottle Club LLC

DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO

Revised

**PETITION FOR DECLARATORY STATEMENT TO DEPARTMENT OF
ALCOHOLIC BEVERAGES AND TOBACCO**

Petitioner, BOTTLE CLUB LLC d/b/a EYZ WIDE SHUT II, ("BOTTLE"), pursuant to §120.565 Fla. Stat., and Rule 28-105, Florida Administrative Code, files this petition for declaratory statement, ("Petition"), to obtain the DEPARTMENT OF ALCOHOLIC BEVERAGES AND TOBACCO'S, ("DABT"), opinion on questions set forth by BOTTLE as it applies to their particular circumstances.

DS 2010-090

PARTIES

1. BOTTLE, a Florida corporation, is a nightclub doing business in Hillsborough County, Florida. They are located at 8504 E. Adamo Drive, Suites 150 & 160, Tampa, FL 33619, and their telephone number is (813) 620-1234. BOTTLE is acting in this matter through its undersigned attorney.

2. The DABT is a governmental organization created by the Laws of Florida, and exists and operates under §561-569 Fla. Stats. Pursuant to §120.565 Fla. Stat., BOTTLE is filing this Petition with the DABT.

BOTTLE CLUB LLC'S SUBSTANTIAL INTERESTS

3. On September 7, 2010, BOTTLE, through its attorney, submitted multiple questions to the DABT. These questions involved complicated legal issues and BOTTLE wished to obtain an official advisory opinion so they could continue to follow and obey Florida Law. On

September 15, 2010, Susan Doherty, Chief, Bureau of Licensing, DABT, informed BOTTLE that the DABT does not render informal or advisory opinions, however, BOTTLE could submit a petition for declaratory statement to the DABT.

4. Petitioner has a substantial interest in obtaining a declaratory statement regarding the questions that BOTTLE submitted to the DABT. The proposed questions pertain to Chapters 561, 562, and 565 of the Florida Statutes.


5. First, BOTTLE is currently under a 4-COP license. BOTTLE proposes the following business set-up. The 4-COP will close its establishment at pre-determined time, and after the 4-COP closes a bottle club, will open at the same location. The bottle club will be under a different license and different ownership, unless a 4-COP and bottle club can be under the same ownership. All the alcohol from the 4-COP would be stored and locked in a cabinet. The only alcohol allowed in the Bottle Club would be alcohol that customers have brought themselves. BOTTLE wishes to know if this set-up is legal.

6. Second, BOTTLE was informed of a 210-day rule, that states that they have to operate a certain length of time each week, and that they have to be open for at least 210 days during the calendar year and eight hours per day. BOTTLE was also informed that this rule takes effect six months after their license was received. For unknown reasons, BOTTLE's permanent license was delayed for five months, and it was only issued after BOTTLE's attorney, Michael A. Linsky, P.A., sent a letter to Tallahassee to inquire as to the status of the license. BOTTLE is currently operating, however, it is unclear whether the 210-day rule takes effect six months after receiving its temporary license, or whether the rule takes effect six months after receiving its permanent license.

WHEREFORE, BOTTLE respectfully requests that a declaratory statement regarding the DABT's opinion be granted as it pertains to the questions set forth above.

Respectfully submitted this 7th day of October 2010.

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