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August 19, 2008

Middleboro Board of Selectmen
(via FAX#: 508-946-0058)

RE: Draft Rules and Regulations for Sale of Alcoholic Beverages



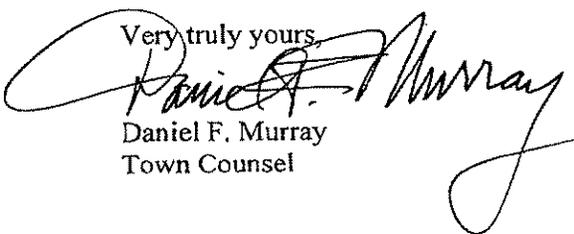
Dear Members:

You asked for comments regarding the referenced rules and regulations. I find no general statutory authority to authorize an alcoholic beverages licensing authority to adopt regulations covering the subject of alcoholic beverages sales/licensing/conduct of licensees. I think there must be statutory or other authority to enable adoption of regulations by a licensing authority. I found in Section 12 of Chapter 138 authority to adopt local regulations regarding selling and/or serving beverages to guests at clubs and war veterans' establishments. I also found in Section 26 of Chapter 138 authority to adopt local regulations pertaining to the appointment of a manager for a corporate licensee. There is a reference in Section 23 of Chapter 138 to adoption of local regulations in the context of a license revocation on account of a violation of any regulation adopted by a local licensing authority, but the Section 23 language in my opinion may not properly be construed as authority to adopt local regulations.

Assuming there is authority to adopt local regulations, I recommend that any section whose subject is contained in any statute or ABCC regulation should not be included in the rules and regulations. I think it is not necessary to cover by local regulation something which is covered by statute or ABCC regulation. There certainly is the potential for a local regulation to conflict with a statute or ABCC regulation, especially in case where the statute or regulation may be amended after a regulation is adopted or where the local regulation may differ from the statute or ABCC regulation.

I understand that one objective of the proposed regulations is to make sure that licensees will not be able to claim ignorance of the law when charged with a violation. The ABCC website has a summary of alcoholic beverage law in something called the "Blue Book". Also, its website has Chapter 138 and ABCC regulations. You might want to consider copying the "Blue Book" off the website and provide it to new licensees.

I enclose a comment sheet which is subject to the remarks made in the first paragraph.

Very truly yours,

Daniel F. Murray
Town Counsel

DFM/s
Enclosure
08-103-1

cc: Charles J. Cristello, Town Manager (via FAX#: 508-946-2320)