

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

**ADVISORY NOTICE TO THE ALCOHOLIC BEVERAGE INDUSTRY
PROHIBITING USE OF CROWD-SOURCED FUNDING
IN RELATION TO LIQUOR LICENSES**

Crowd-sourced funding, or Crowdfunding, is an evolving method of raising capital that has been used to raise funds through the Internet for a variety of projects.¹ Generally, a large number of investors invest small amounts of money through web-based platforms such as Kickstarter, IndieGoGo, Crowdfunder, RocketHub, and others. Some examples of industries in which crowd-sourced funding has become prominent are education, (where public school teachers have utilized the process to request materials for classrooms), humanitarian causes (such as the iCancer project to support development of an anti-cancer drug), and the arts (where crowd-sourced funding has been used to fund theatrical releases and musical recordings).

It has been brought to the attention of the Division of Alcoholic Beverage Control (the "Division"), that a number of licensed entities and applicants currently are utilizing or have previously utilized crowd-sourced funding campaigns to support either the purchase of a liquor license, a licensed business, or for additional financing in connection with the licensed business. I am issuing this Advisory Notice to the industry to clarify the Division's position that crowd-sourced funding campaigns are prohibited as impermissible sources of funding in connection with a liquor license in the State of New Jersey. Any licensee or applicant for a license engaging in this fundraising practice shall immediately cease such campaigns and remove all said references from its website, social media, and other promotional materials.

In supervising the alcoholic beverage industry, the Director must determine the qualifications and fitness of those who wish to hold a liquor license. IMO Application of George W. "Chip" Dunn, 10 N.J.A.R. 1, 10 (ABC 1984). No individual is entitled to hold a liquor license as a matter of law, but rather must prove by a preponderance of the evidence that s/he is qualified. Zicherman v. Driscoll, 133 N.J.L. 586, 588 (1946). See also Lyons Farm Tavern v. Mun. Bd. of ABC, 68 N.J. 44, 50-51 (1975); Sturchio v. Harrison, 9 N.J.A.R. 78, 82 (ABC 1986); N.J.S.A. 44:1-3.1(b)(5) ("Participation in the industry as a licensee... shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee.") Moreover, an application for a liquor license may be denied when it appears that applicant is an unfit person, even if he has never been convicted of a crime. IMO Application of George W. "Chip" Dunn, *supra*; Marsillo v. Twp. Of Randolph, A.B.C. Bull. 1367, Item 3 (December 21, 1960), citing Sylvester v. South Belmar, A.B.C. Bull. 38, Item 15 (July 2, 1934); Hodanish v. Trenton, A.B.C. Bull. 121, Item 6 (May 28, 1936).

The Division requires applicants for every type of license to provide the source of all funding used to purchase a license and a licensed business, as well as any additional financing

¹ Press Release 2015-249, United States Securities and Exchange Commission, accessed March 5, 2019 via <https://www.sec.gov/news/pressrelease/2015-249.html>.

obtained in connection with the licensed business. This requirement is in accordance with N.J.S.A. 33:1-25, which mandates that applicants for licenses answer questions asked and make declarations as required by the Director and included on the application forms. The source of all funding for an applicant is one such declaration that is required for all license applicants.

In reviewing an application for a liquor license and in determining the qualifications of an applicant for a liquor license, the Division applies the same standards as does a municipal issuing authority reviewing the qualifications of an applicant for a retail license. Among other things, an application will not be approved unless the issuing authority makes an affirmative finding that:

The applicant has disclosed and the authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business.
N.J.A.C. 13:2-2.9(b)(2).

This review aids the Division in meeting the policy goals set for it by the legislature, specifically: strictly regulating alcoholic beverages to protect the health, safety and welfare of the people of this State, protecting the interests of consumers against fraud and misleading practices in the sale of alcoholic beverages, protecting against the infiltration of the alcoholic beverage industry by persons with known criminal records, habits or associations, and maintaining trade stability. N.J.S.A. 33:1-3.1, or those who are otherwise disqualified from holding an interest in a license sought by the applicant.

Reviewing the source of funds allows the Division to ensure that no disqualified individual has an interest in the license. Further, the review supports the Division in anticipating whether an applicant is financially able to commence and maintain the business. An applicant on unsteady financial ground might be more likely to accept money from impermissible sources in order to operate, or might engage in deceptive, fraudulent, and illegal acts in an effort to seek cost savings or generate revenue, to the detriment of the consuming public and the industry as a whole.

The Division's policy prohibiting the use of crowd-sourced funding campaigns in relation to liquor licenses is applicable to all State and municipal licenses for which the appropriate authority reviews the source of funding. While the position of the Division has not changed in regards to crowd-sourced funding, it has become clear that confusion exists in the marketplace about what are permissible sources of funding. This policy will be strictly adhered to and in force from the date of this Advisory Notice. Any questions concerning this Advisory Notice should be directed to Acting Counsel Alyssa Wolfe at (609) 376-9676 or DAG Paul Urbish at (609) 376-9635.



JAMES B. GRAZIANO
ACTING DIRECTOR

DATED: 12 March, 2019