

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

IN THE MATTER OF THE NEW JERSEY)	
DIVISION OF ALCOHOLIC BEVERAGE)	SR 2022-05
CONTROL'S EXCLUSIVE JURISDICTION)	SPECIAL RULING CONCERNING
OVER ALCOHOLIC BEVERAGE LICENSES)	ISSUING AUTHORITY FOR
AT NEWARK LIBERTY INTERNATIONAL)	SPECIAL CONCESSIONAIRE
AIRPORT)	PERMITS AT NEWARK LIBERTY
_____)	INTERNATIONAL AIRPORT

BY THE DIRECTOR:

I. Introduction.

Newark Liberty International Airport (“Newark Airport” or “Airport”) is a unitary facility consisting of three terminals (A, B and C) that overlaps two separate municipalities, the City of Newark (“Newark”) and the City of Elizabeth (“Elizabeth”). Two out of the three concourses of Terminal B and the entire Terminal C are located in Newark; Terminal A (soon-to-be-replaced by “New Terminal A”) and the remaining concourse of Terminal B are located in Elizabeth. *See* Map of Newark Airport (attached hereto as Exhibit 1). Newark owns the land on which Terminal C and 2/3 of Terminal B sit. The Port Authority of New York and New Jersey (“Port Authority” or “PANYNJ”) is the owner of the Terminal A (and New Terminal A) building and 1/3 of the Terminal B building and the land upon which these buildings sit in Elizabeth.

The Port Authority operates Newark Airport, and is responsible for the various alcoholic beverage concessions located throughout the facility. Currently, three separate issuing authorities issue liquor licenses at the Airport: the Elizabeth ABC Board issues the liquor licenses in Terminal A;¹ the Newark ABC Board issues a few liquor licenses (described below) in Terminal B; and the

¹ According to the Division’s records, there are no liquor licenses sited in the Terminal B concourse located in Elizabeth.

Division of Alcoholic Beverage Control (the “Division” or “ABC”) issues Special Concessionaire Permits (“SCPs”) to OTG Management EWR, LLC and Compass Group USA, Inc.² at Terminal C, and a few (described below) at Terminal B. See In the Matter of Special Concessionaire Permit OTG Management EWR, LLC, Appeal No. 7844 September 16, 2015 (“2015 OTG Order”) (incorporated herein by reference and described in Section II B below) (ABC asserted its authority to regulate alcohol sales and service at Terminal C of Newark Airport based on the fact that Terminal C is located on Newark-owned property, and pursuant to N.J.S.A. 33:1-42, alcohol sales in public buildings on public property are within the exclusive jurisdiction of the ABC.)

Newark Airport is a unique facility because it is a major international airport serving the travelling public that straddles two municipalities and is located on lands owned by Newark and the Port Authority. The only entities authorized to regulate alcohol sales in New Jersey are either municipalities or the Division. *See* N.J.S.A. 33:1-19 and -42. The Division believes that having three different issuing authorities -- ABC, Newark and Elizabeth -- issue liquor licenses at different locations within the same facility creates a situation that could be confusing to licensees, could be difficult to administer and enforce, and could lead to inconsistent regulation and the possible disruption of alcohol sales at a major international airport.

Prior to the issuance of this Special Ruling, the Division met with representatives of Newark, Elizabeth and the Port Authority to discuss its plan to assert its jurisdiction over alcohol sales throughout the remainder of the Airport. In addition, the Division has had numerous discussions and correspondence with these representatives to address their questions and concerns. No objections to the Division’s plan have been expressed by either municipality or by the Port Authority.

² On November 10, 2021, the Division issued a Temporary SCP to Compass Group USA, Inc. (“Compass”) for the operation of three lounge clubs at the Airport: the United Polaris Lounge, the United Club C74 and the C3 Mezz Club.

Accordingly, for the reasons set forth herein, the Division has determined that both law and logic dictate that it should be the single issuing authority and have exclusive jurisdiction to regulate all sales and service of alcoholic beverages at Newark Airport.

II. Background.

A. Newark Airport.

Newark Airport is one of the busiest airports in the New York-New Jersey metropolitan area in terms of flights and one of the busiest in the country. It occupies 2,047 acres with three runways. Each of its three terminals (A, B and C) has three concourses with a combined total of 121 gates. As of September 2019, over 46 million passengers (approximately 31 million domestic and 14.3 million international passengers), the most in its history, traveled through the Airport. This is an approximate sixteen-fold increase from 1960 (2.9 million passengers) and an approximate five-fold increase from 1980 (9.2 million passengers).³

B. 2015 OTG Order.

In 2015, the Division asserted its jurisdiction over liquor license issuance at Terminal C. *See In the Matter of Special Concessionaire Permit OTG Management EWR, LLC, Appeal No. 7844.* The ABC based its authority on the fact that Terminal C is located on Newark-owned property, and pursuant to N.J.S.A. 33:1-42, alcohol sales in public buildings on public property are within the exclusive jurisdiction of the ABC. Prior to this Order, the Newark ABC Board issued alcoholic beverage licenses in Terminal C.

In the OTG matter, a situation had arisen that required the ABC to re-evaluate Newark's role as the license issuer at the Airport. After Division review of the pertinent documents, the 1947 Lease between the Port Authority and Newark, and its legal authority under N.J.S.A. 33:1-42, the Division

³ See https://old.panynj.gov/airports/pdf-traffic/EWR_SEPT_2019.pdf, last visited September 8, 2021.

concluded that the ABC Act required it to be the sole issuing authority at Terminal C. At that time, the Port Authority selected OTG to be the exclusive alcohol vendor at Terminal C, and the Port Authority agreed to ABC's jurisdiction by authorizing OTG to sell alcohol at various locations throughout that terminal, as required by N.J.A.C. 13:2-5.2(c)(1). OTG has been selling alcohol at Terminal C pursuant to an SCP, without incident, since 2015.

In the 2015 OTG Order, however, the ABC did not assert its jurisdiction to regulate the sales and service of alcohol at Terminals A and B. But the Division noted its intention to do so following discussions with Elizabeth, Newark and the Port Authority. Now, for the reasons set forth herein, ABC is extending its determination to be the exclusive issuing authority of liquor licenses at the entire Airport. *See* Footnote 10 in 2015 OTG Order.

C. Terminal A and New Terminal A.

According to Section 12 of the 1947 lease between the City of Newark and the Port Authority, the Port Authority owns Block 1, Lot 2104 in Elizabeth. *See* Exhibit 1. Terminal A and the New Terminal A building (currently under construction) and approximately 1/3 of Terminal B are situated on this parcel, and these buildings, to the Division's understanding, are owned by the Port Authority.⁴ As for the portion of Terminal B located in Elizabeth, there are no licensed establishments in that concourse. *See* Section II. E. Terminal B, below.

According to the Port Authority, the \$2.7 billion investment as part of the Terminal Redevelopment Program to build a New Terminal A represents the largest design-build project in the history of the Port Authority. New Terminal A, which is replacing the outmoded Terminal A that first opened in 1973, will feature cutting-edge technology and high-end dining and retail options in approximately one million square feet of space able to accommodate 13.6 million passengers on three

⁴ *See* 1947 Ground Lease, Section 12.

levels. The current Terminal A building will be demolished.⁵ New Terminal A will also include 140 acres of airfield paving, associated roadway and airside improvements and a new parking garage. New Terminal A is slated to have a partial opening this year.⁶

The Division's understanding is that the Port Authority has contracted with a developer to build New Terminal A. The Port Authority has also contracted with an entity to serve as landlord for the new vendors who will be licensed to sell and serve alcoholic beverages there. The Port Authority is currently in the process of selecting vendors to sell alcohol in Terminal A through a Request for Proposal ("RFP") process. Once the successful vendors are identified by the Port Authority, these vendors must apply to the Division for SCPs pursuant to N.J.A.C. 13:2-5.2 and follow the application process described in this Ruling. It is the Division's intention that there will be no interruption in the sales and service of alcoholic beverages once the New Terminal A opens.

D. Current license holders in Terminal A.

According to the Division's records, there are currently five plenary retail consumption licenses issued by the Elizabeth ABC Board in Terminal A. Four of the establishments are open and operating: 1) MIDFIELD CONCESSION ENTERPRISES, INC., DBA Phillips Seafood (Lic. No. 2004-33-031-006); 2) AMERICAN AIRLINES, LLC, DBA American Airlines (Lic. No. 2004-33-070-002); 3) AREAS USA EWR, LLC, DBA Tony Roma's (Lic. No. 2004-33-126-006); 4) FLIK INTERNATIONAL CORP. DBA United Club Lounge (Lic. No. 2004-33-145-004). The fifth license

⁵ See <https://www.panynj.gov/airports/en/index/airport-redevelopment-page.html>, last visited September 8, 2021.

⁶ See <https://www.ewrredevelopment.com/about-terminal-one-redevelopment/>, last visited September 8, 2021.

is currently held in pocket”⁷ status and is not sited or operating: 5) SODEXO OPERATIONS, LLC (Lic. No. 2004-33-182-014).

The Division understands that the current license holders in Terminal A have been placed on notice that their leases will expire because of the impending plan to demolish the Terminal A building and build a new terminal. The four open and operating businesses will be able to place their licenses in “pocket,” and then sell the licenses, or transfer and activate the licenses at another location within Elizabeth. Elizabeth will continue to receive license renewal fees (assuming these licenses are renewed). Additionally, all five current licensees may apply for SCPs within New Terminal A, provided they have been selected by the Port Authority to be alcoholic beverage vendors there. If selected, the applicants must apply to the Division for SCPs pursuant to N.J.A.C. 13:2-5.2 and follow the application process described in this Ruling.

E. Current License Holders in Terminal B.

Currently, there are eight plenary retail consumption licenses issued by the Newark ABC Board, and three SCPs and one Temporary SCP issued by the Division in Terminal B.

Of the eight plenary retail consumption licenses issued by the Newark ABC Board in Terminal B, seven are open and operating businesses:

1. MIDFIELD CONCESSION ENTERPRISES, INC., DBA Mediterranean Bistro, Sora Sushi (Lic. No. 0714-33-147-006)
2. HOST SERVICES OF NEW YORK, INC., DBA Chili’s Too (Lic. No. 0714-33-338-009)
3. WORLDWIDE FLIGHT SERVICES, INC., DBA Worldwide Flight Services (Lic. No. 0714-33-340-007)
4. VINO VOLO, INC., DBA Vino Volo (Lic. No. 0714-33-356-006)
5. FLIK INTERNATIONAL CORP., DBA British Airways Lounge (Lic. No. 0714-33-458-006)
6. AREAS USA EWR, LLC, DBA McGinley’s Irish Pub (Lic. No. 0714-33-684-004)

⁷ In liquor law parlance, a “pocket license” is an inactive license that is not sited at a physical premises; it is held “in pocket.” A pocket license can be activated only after the issuing authority grants a place-to-place transfer application transferring the license from the holder’s “pocket” to an approved premises over which the holder maintains exclusive possession. See N.J.A.C. 13:2-9.3.

7. DELTA AIRLINES, INC., DBA Delta Sky Club (Lic. No. 0714-33-915-004)

The one inactive plenary retail consumption license held “in pocket” issued by the Newark ABC Board in Terminal B is listed below:

1. AIRPORT DINER, LLC, DBA Garden State Diner (Lic. No. 0714-33-744-008)

The holders of the three State-issued SCPs are listed below:

1. SSP AMERICA, EWR, LLC, DBA Liberty Diner (Lic. No. 3404-14-782-001)
2. HOST IAV EWR FB LLC, DBA Budweiser Brew House (Lic. No. 3404-14-885-001)
3. HOST IAV EWR FB LLC, DBA Jersey by the Shore (Lic. No. 3404-14-901-001)

The holder of the State-issued Temporary SCP is listed below:

1. SODEXO OPERATIONS LLC, Lufthansa Business Lounge, issued March 25, 2022.

Based on ABC’s determination in the 2015 OTG Order that it has the exclusive jurisdiction to regulate alcohol sales on publicly-owned property, the ABC is now asserting this authority in Terminal B, which is located on Newark-owned property. As such, the municipally-issued license holders will be required to obtain SCPs on or before July 1, 2023, and should begin to apply to the Division for these permits if they desire to remain operational at the Airport. The municipally-issued licenses will need to be placed in “pocket” status until such time as the licensee chooses to either sell its license, or transfer and activate it at another location in Newark. In either scenario, Newark will continue to receive license renewal fees (provided these licenses are renewed).

As it did in 2015, the Division will work closely with the Newark ABC Board to facilitate all license transfers and will guide the licensees on the SCP application process to ensure that there will be no interruption of alcohol sales and service at Terminal B. The current State-issued SCPs issued in Terminal B will continue to operate without any change to their liquor operations. As noted above, there are no liquor licenses issued in the Terminal B concourse that is located in Elizabeth.

III. Legal Analysis.

A. The Division is the exclusive issuing authority at Newark Airport based on a reasonable construction of N.J.S.A. 33:1-16 and policy considerations.

When a licensed establishment is located in more than one municipality, the Legislature determined that there should only be one authority that issues the liquor licenses at that establishment. Specifically, the Legislature provided, in pertinent part:

Whenever it shall appear that a building or premises to be licensed is located in more than 1 municipality, whether originally so constructed or whether resulting from enlargement or addition to the building or premises, it shall not be necessary to secure more than 1 license of the same class for the building or premises. Application may be made in 1 of the municipalities having jurisdiction over any part of the building or premises and said municipalities shall agree upon a satisfactory division of the fee. [N.J.S.A. 33:1-16.] [Emphasis added.]

While this statute applies on its face to municipally-issued licenses, principles of statutory construction and strong public policy dictate that there should be a single issuing authority at Newark Airport, and that issuing authority must be the Division.

As described in detail below, the policy considerations supporting this interpretation include 1) the need for consistent and uniform regulation and enforcement of alcoholic beverage laws throughout the entire Airport; 2) the fact that Newark Airport has interests beyond the local boundaries in which it is located; and 3) the fact that the Division has more flexible enforcement mechanisms beyond revocation or suspension of licenses for violations of the ABC Act. These considerations, the Division's successful regulation of alcohol sales and service at Terminal C, and a reasonable reading of N.J.S.A. 33:1-16 favor an interpretation that the Division should have exclusive jurisdiction over alcohol at the entirety of Newark Airport. See Blanck v. Mayor of Magnolia, 38 N.J. 484, 490 (1962) ("Because of its *sui generis* nature and significance, [the State's alcohol law] is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied.")

The logic behind N.J.S.A. 33:1-16, however, was not always apparent. Specifically, in Formal Opinion-1952, No. 22 (September 3, 1952), Attorney General Theodore D. Parsons acknowledged that the then-existing language of N.J.S.A. 33:1-16 permitted application for a liquor license to be “made in *each* of the municipalities having jurisdiction over any part of the building or premises” even though there was only one license fee paid to be prorated between the municipalities. (Emphasis added.) That opinion addressed a single hotel that straddled Princeton Borough and Princeton Township. The Attorney General concluded that then-N.J.S.A. 33:1-16 was intended to eliminate the “unjust requirement” that an applicant would have to pay separate license fees to two municipalities for a single place of business. *Id.* at 106-107. However, he recognized that the applicant had to submit separate applications to each municipality, and in that case, Princeton Borough exceeded the population cap in N.J.S.A. 33:1-12.14. As such, Princeton Borough “could not authorize the operation of a licensed business on that portion of the premises of the Princeton Inn located in its municipality.” *Ibid.* See also Mary Slee Catering Corp. v. Mayor and Council of Borough of Princeton, 31 N.J. Super. 57 (1954). Seemingly acknowledging the illogicalness of this result, in 1959, the Legislature amended N.J.S.A. 33:1-16 to require that only one municipality should be the issuing authority for a licensed premise located in two different municipalities. See L. 1959, c. 67, §1, eff. June 3, 1959.

The current N.J.S.A. 33:1-16 plainly applies to a licensed establishment located in two different municipalities – in that situation, only one municipal authority issues the license and the licensing fee is prorated between the municipalities. The Legislature did not, however, contemplate the situation presented by Newark Airport, a major international airport located partially on public property, partially on Port Authority-owned property, situated in two different municipalities, and subject to the Division’s liquor licensing jurisdiction in 2/3 of Terminal B and all of Terminal C.

Where a statute is clear on its face, there is no need to consider extrinsic evidence to glean the Legislature’s intent. TAC Associates v. New Jersey Department of Environmental Protection,

202 N.J. 533, 540-541 (2009). “If the plain language leads to a clear and unambiguous result, then the interpretative process is over.” Ibid. However, where the Legislature has not addressed the precise question of statutory meaning, a court will not impose its own construction of the statute, but rather will look to see if the administrative agency’s interpretation is based on a permissible construction of the statute. Maturri v. Bd. of Trs. of the Judicial Ret. Sys., 173 N.J. 368, 381-382 (2002). In general, a court will “defer to the agency’s interpretation ... provided it is not plainly unreasonable.” Ibid. (citation omitted); R&R Marketing, LLC v. Brown-Forman Corporation, 158 N.J. 170, 175 (1999) (“Courts generally give substantial deference to the interpretation an agency gives to a statute that the agency is charged with enforcing.”) *See also* Kasper v. Bd. of Trs. Of the Teachers’ Pension and Annuity Fund, 164 N.J. 564, 581 (2000) (“To uphold an agency’s construction of a statute that is silent or ambiguous with respect to the question at issue, a reviewing court need not conclude that the agency construction was the only one it permissibly could have adopted, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding.”)

In the instant matter, the same reasoning that dictates that a single premise located within two municipalities must obtain a liquor license from one issuing authority should apply equally to Newark Airport. And, that issuing authority must be the Division. Not only is this a reasonable construction of N.J.S.A. 33:1-16 but it is supported by important public policy considerations.

First, there should only be one issuing authority for liquor licenses at Newark Airport to avoid potential inconsistencies and uneven enforcement. For example, if there were two (or even three, in the present situation) different authorities issuing a license for a single premises overlapping in two municipalities, it is quite possible that one issuing authority may impose different special conditions on the license than the other. Each issuing authority has significant latitude and discretion under Title 33 to impose special conditions on a license that it deems are “necessary and proper to accomplish the objects of this chapter.” *See* N.J.S.A. 33:1-32. In addition,

some issuing authorities may have a more or less vigorous enforcement agenda and a larger or smaller number of investigators, resulting in uneven enforcement of the ABC laws. *See* N.J.S.A. 33:1-31. Having one issuing authority reduces these potential discrepancies.

Second, consideration should be given to the fact that Newark Airport is a major international airport serving the travelling public, and has interests that transcend the local boundaries in which the airport is located. The ABC Act makes clear that municipal control is limited to local issues; whereas, issues requiring uniformity of application or affecting statewide concerns are relegated to the Division. *See* N.J.S.A. 33:1-18 and -19. Typical retail liquor licensing decisions considered by municipalities are focused, and rightly so, on the impact that alcoholic beverage service will have on the public health, safety and welfare within that municipality, such as service to persons under the legal age, or danger to community through acts of violence or drunken driving due to over-service of alcohol. Here, however, the licensing concerns at Newark Airport extend beyond the boundaries of Newark and Elizabeth proper. Common experience indicates that the vast majority of alcoholic beverage patrons at the Airport are waiting to board departing flights or have disembarked from arriving flights, are waiting to board connecting flights, or may be departing for destinations throughout New Jersey. Therefore, unlike concerns arising at Newark's and Elizabeth's retail licensed establishments, those at Newark Airport do not implicate the same local concerns, and instead involve State-level issues. To ABC's knowledge, there is no evidence that consumption of alcohol at Newark Airport has had any discernible impact on the residents of Newark or Elizabeth.

Third, since the Appellate Division's decision in IMO Xanadu, 415 N.J. Super. 179 (App. Div. 2010), which provided a framework for the Director's review of applications for Special Concessionaire Permits on public property, the Division has been issuing an increasing number of Special Concessionaire Permits at arenas (Prudential Center), golf courses (Mercer Oaks Golf Course), and parks (Liberty State Park). Likewise, the Division has been issuing SCPs at facilities

that are operated by State authorities (Atlantic City Airport) or bi-State agencies (Cape May Lewes Ferry). Similar to Newark Airport, these venues primarily serve the public, and not just the residents of the municipality in which they are located. Because of their regional impact, these public venues are distinct from a local restaurant, bar or liquor store located in any one particular town. Based on the Division's experience, alcoholic beverage issues at public venues are better addressed by reasonable, predictable and uniform conditions placed upon a State-issued permit, which are not influenced by the narrower concerns of any individual town. These policy considerations supported the issuance of an SCP at Newark Airport when the Division previously addressed the issue with regard to Terminal C. These same considerations support the Division's issuance of SCPs at New Terminal A and throughout the entirety of Newark Airport.

Finally, concerns about enforcement also weigh heavily in favor of the Division issuing SCPs at the Airport. As with any other alcoholic beverage license, the Division and municipality share the responsibility for investigating violations of the ABC Act or conditions attached to a license or permit. However, if an SCP is issued by the Division, any resulting prosecution will be brought by the Division. The municipality is limited to suspension or revocation of the license or permit if there is a violation of any imposed special conditions or regulation. Importantly, the Division is not limited to these two disciplinary options. Rather, the Division has the authority under N.J.S.A. 33:1-31 to "accept from any licensee an offer in compromise in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license by the director." Elizabeth and Newark do not have the authority to accept a fine in lieu of suspension. Accordingly, the State's broader and more flexible enforcement authority allows the Division to take appropriate action against a licensee, without potentially causing a cessation of alcohol at the airport.

Therefore, based on a reasonable reading of N.J.S.A. 33:1-16, the fact that the Division has already asserted its exclusive jurisdiction over alcohol sales and service in Terminal C, and the

foregoing policy considerations militating in favor of the Division's authority, the Division has concluded that it should be the single issuing authority for the sale and service of alcoholic beverages at the entire Newark Airport. *See Circus Liquors, Inc. v. Middletown*, 199 N.J. 1, 10 (2009) (“When evaluating an action of the Director of Alcoholic Beverage Control, substantial deference is owed to the Director.”)

B. In the alternative, N.J.S.A. 33:1-42 provides additional authority in support of the Division's exercise of exclusive jurisdiction over liquor licensing at Newark Airport.

While a reasonable reading of N.J.S.A. 33:1-16 supports the Division's determination that it should be the issuing authority for all three terminals at Newark Airport, there is an adequate, alternative basis that also supports this conclusion. Because the Port Authority exhibits several characteristics of a “political subdivision” in its operation of Newark Airport, the Division concludes that N.J.S.A. 33:1-42 provides additional authority for it to assert its liquor licensing authority there. *See* 2015 OTG Order, pp. 32-37.

In general, retail liquor licenses, such as bars, restaurants and liquor stores are issued by municipal issuing authorities. *See* N.J.S.A. 33:1-19. However, in N.J.S.A. 33:1-42, the Legislature created an exception to this general authority, such that the Division has exclusive jurisdiction to issue retail liquor licenses (known as Special Concessionaire Permits or SCPs) at properties or in buildings that “belong[...] to or are under the control of the State or any political subdivision thereof.” *See IMO Xanadu*, 415 N.J. Super. at 182. (“While one usually obtains authorization to sell alcoholic beverages by way of a municipality-issued license ..., when the sales will take place on State property, authorization to sell is obtained by way of a special concessionaire permit issued by the Director of the New Jersey Division of Alcoholic Beverage Control.”)

N.J.S.A. 33:1-42 provides in its entirety:

No sales of alcoholic beverages shall be made in any public buildings belonging to or under the control of the (S)tate or any political subdivision thereof except as to the national guard as hereinbefore

provided, and except as permitted by the commissioner [Director] in specified cases and subject to rules and regulations. [Emphasis added.]

The Division interprets this statute to apply in both public buildings and on public property. *See* N.J.A.C. 13:2-5.2. The ABC Act provides that retail liquor licenses may only be issued by municipalities or by the Division. The Port Authority has no independent statutory authority to issue liquor licenses.

In 2015, the Division concluded that N.J.S.A. 33:1-42 requires it to be the issuing authority at Terminal C based on the indisputable fact that Terminal C is a public building situated on public property owned by Newark. *See* 2015 OTG Order; *see also* N.J.S.A. 33:1-42; N.J.A.C. 13:2-5.2. Although the Port Authority is not the State of New Jersey or a political subdivision thereof, it is indisputable that the Port Authority performs a vital public function in its role as the operator of the entire airport. Accordingly, for the reasons set forth below, the Division finds that the Port Authority fits within the intendment of N.J.S.A. 33:1-42, therefore, the Division must be the issuing authority of liquor licenses at Terminal A and 1/3 of Terminal B, which are located on Port Authority-owned property in Elizabeth, and the remainder of the Airport (Terminal C and 2/3 of Terminal B), which are owned by Newark.

i. Port Authority performs essential governmental functions in its operation of Newark Airport and therefore fits within the intendment of N.J.S.A. 33:1-42 for purposes of liquor licensing at Terminals A and B.

The Port Authority⁸ is a bi-State agency that was created pursuant to an interstate compact, signed April 30, 1921, between New Jersey and New York, with the consent of Congress. N.J.S.A. 32:1-1; U.S. Trust Co. of New York v. State, 134 N.J. Super. 124, 136 (L. 1975). In 1947, the Port Authority was charged with the development of “air terminals” within the Port Authority District. N.J.S.A. 32:1-35.1. This includes the development of runways, hangars, control towers, buildings,

⁸ The name of the Port of New York Authority was changed to the Port Authority of New York and New Jersey on July 1, 1972. N.J.S.A. 32:1-4.

structures, parking areas, improvements and facilities that are necessary, convenient or desirable for the operation of an airport. N.J.S.A. 32:1-35.3. The New Jersey Legislature declared that the “effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance and operation of air terminals by the Port Authority” is an “essential governmental function.” N.J.S.A. 32:1-35.4; *see also* U.S. Trust Co., 134 N.J. Super. at 193-194 (History of Port Authority establishes that it was intended by the states and by Congress to perform governmental functions necessary and vital to the public safety, health and welfare of the citizens of the two states and the nation as well).

The Port Authority’s mission is to identify and meet the critical transportation infrastructure needs of the bi-State regions’ businesses, residents, and visitors. At the direction of the States of New York and New Jersey, the Port Authority has developed airports, marine terminals, six bridges and tunnels connecting New York and New Jersey, bus terminals including the Port Authority Bus Terminal in Manhattan, the PATH rapid transit system, the World Trade Center and other facilities of commerce and transportation.

Without question, many of the Port Authority’s responsibilities serve a public purpose, including maintaining a safe and secure Airport; maintaining records and statistics of all travelers and the use of the Airport; and improving and developing the Airport.⁹ The Port Authority publishes vital resources covering many different areas, such as the Airport Rules and Regulations for all three Airports (Newark, JFK and LaGuardia Airports) in the interest of safe, efficient and environmentally sensitive operation.¹⁰ The Port Authority prepares and publishes critical plans including emergency and tarmac delay contingency plans.¹¹ The Port Authority is responsible for developing ways to fund

⁹ See <https://www.panynj.gov/airports/en/operator-resources.html>, last visited Nov. 15, 2021.

¹⁰ See The Port Authority of New York and New Jersey, Traffic Rules and Regulations for the Holland Tunnel, Lincoln Tunnel, George Washington Bridge, Bayonne Bridge, Goethals Bridge, Outerbridge Crossing, Revised September 2016, p. i.

¹¹ See <https://www.panynj.gov/airports/en/operator-resources.html>, last visited Nov. 15, 2021.

critical airport capital projects.¹² These activities all fall within the ambit of essential government functions.

The Legislature enacted N.J.S.A. 33:1-42 in 1933, which was before the properties that eventually became Newark Airport were leased or sold to the Port Authority. At that time, the Legislature could not have contemplated that a bi-State agency like the Port Authority would operate an international airport the size and scope of the present day Newark Airport, or that alcoholic beverages would be sold at this public facility.

As the New Jersey Supreme Court recognized:

[Events] that were unforeseen at the time of initial legislative action have [often] required the reinterpretation and fresh application of relevant statutory law in order to avoid the inadvertent and unintended creation of a statutory anomaly or hiatus and to preserve for such legislation a sensible place in the contemporary scene.

[Bunk v. Port Authority of New York and New Jersey, 144 N.J. 176, 190 (1996).]

However, even though it was not contemplated that Terminal A and part of Terminal B would be owned by the Port Authority, it does not necessarily mean that the Port Authority is not covered by the authority contained in N.J.S.A. 33:1-42.

Where it is clear that the drafters of a statute did not consider or even contemplate a specific situation, the New Jersey Supreme Court has adopted an established rule of statutory construction, which requires statutes to be interpreted "consonant with the probable intent of the draftsman 'had he anticipated the situation at hand.'" J.C. Chap. Prop. Owner's etc. Assoc. v. City Council, 55 N.J. 86, 101 (1969) (citations omitted). Such interpretations do not "turn on literalisms, technisms [sic] or the so-called rules of interpretation; [rather they] will justly turn on the breadth of the objectives of the

¹² See website: [The Port Authority of New York and New Jersey - Capital Plan to Fund Critical Projects \(panynj.gov\)](https://www.panynj.gov/), last visited Nov. 15, 2021.

legislation and the commonsense of the situation." Id. at 100; AMN, Inc. v. South Brunswick Township Rent Leveling Bd., 93 N.J. 518, 525 (1983). *See also* County of Essex v. Waldman, 244 N.J. Super. 647, 656 (App. Div. 1990).

As a bi-State agency, the Port Authority generally is "not subject to the unilateral control of any one of the States that compose the federal system." Hess v. Port Authority Trans-Hudson Corporation, 513 U.S. 30, 42 (1994). Despite this conclusion, the Hess court pointed out that State courts have repeatedly referred to the Port Authority as an agency of the *States* rather than a *municipal unit* or *local district* because the Port Authority handles matters that are not limited to a specific city. Id. at 45 (citing Whalen v. Wagner, 4 N.Y.2d 575, 581-583, (1958) (Emphasis added)). The Port Authority's projects are broader in scope and are more aptly considered projects that affect the State as a whole, and not any one city exclusively. Ibid.

Based on this characterization, the Port Authority is treated as a public entity under many circumstances. For example, the Port Authority has the power of eminent domain. N.J.S.A. 32:1-35.22. The income from its bonds and other obligations is exempt from State and local taxation. N.J.S.A. 32:1-33. Its property is exempt from State and local taxation. N.J.S.A. 32:1-35.5; *See* Port of New York Auth. v. City of Newark, 20 N.J. 386 (1956). The Port Authority has been deemed a "public agency" for purposes of the disclosure of government records under the Open Public Records Law at N.J.S.A. 47:1A-1. N.J.S.A. 32:1-6.4. Taken together, the Port Authority is viewed as a "hybrid institution" - at one and the same time an agency of the State and not an agency of the State. Bunk, 144 N.J. at 186-187.

The Appellate Division evaluated the status of the Port Authority in Brown v. Port Authority Police Superior Officers Ass'n, 283 N.J. Super. 122 (App. Div. 1995). In that case, the Appellate Division decided the applicability of the National Labor Relations Act ("NLRA") to an employment dispute involving the Port Authority. Under the NLRA, the definition of "employer" excluded "any State or political subdivision thereof." In analyzing whether the Port Authority could be considered

a "political subdivision," and therefore exempt from the statute, the Court looked at the following attributes: the Port Authority is administered by twelve commissioners, six of whom are appointed by each of the compact states; any Port Authority action is subject to veto by the governors of the compact states; the Port Authority has general authority to purchase, construct, lease and/or operate any terminal or transportation facility within the Port Authority District, including the operation of three major airports; the Port Authority has the power of eminent domain; and lands owned by the Port Authority are exempt from State and local taxation. Brown, 283 N.J. Super. at 130-131. The Appellate Division concluded that,

in view of the control that the governors and legislatures of the compact states exercise over the Port Authority's operations and the extensive governmental responsibilities it performs, the Port Authority has been described as 'a state agency performing functions on behalf of the state.'

[Brown, 283 N.J. Super. at 131.]

The Court held that the Port Authority could be considered a political subdivision for purposes of the NLRA, and as such, was not an "employer" subject to the provisions of that statute.

Courts have held that entities such as the Port Authority may be considered an agency of the State for some purposes, but not for others. Bunk, 144 N.J. at 186. The Port Authority was "created directly by the [compact] state[s], so as to constitute ... [an] administrative arm[] of the government[s]." Brown, 283 N.J. Super. at 130. It has been held to be a "political subdivision" for purposes of the tax exemption on interest from its bonds. Id. at 131. Additionally, the Appellate Division concluded that the Port Authority is a "political subdivision of the State" subject to contract principles that are applicable to public corporate bodies. Haynes Security, Inc. v. Port Authority of New York and New Jersey, 2012 N.J. Super. Unpub. LEXIS 1328 at *23-24 (App. Div. June 13, 2012).

Based on the activities performed by the Port Authority at Newark Airport and the foregoing case law, the Division has reinterpreted N.J.S.A. 33:1-42 to address today's reality. This re-

interpretation has yielded the conclusion that the Port Authority's essential public functions in its operation of Newark Airport may be characterized as those of a political subdivision within the intent and purposes of N.J.S.A. 33:1-42. As such, N.J.S.A. 33:1-42 authorizes the Division to be the exclusive issuing authority of liquor licenses at this public facility. See Bunk, 144 N.J. at 186-187; Port Auth. Police Benevolent Ass'n v. Port Auth. of New York & New Jersey, 819 F.2d 413, 415 (3d Cir.), cert. denied, 484 U.S. 953 (1987).

ii. The Port Authority may acquiesce to the Division's exclusive jurisdiction over liquor licensing at Newark Airport.

Even if the Port Authority is not included within the intendment of N.J.S.A. 33:1-42, the Port Authority could still be subject to New Jersey law when: (1) the compact explicitly provides for unilateral state action; (2) both states have complimentary or parallel legislation; or (3) *the bi-state agency impliedly consented to a single state's jurisdiction*. Alpert v. Port Authority, 442 N.J. Super. 146, 149; 121 A.3d 427; 2015 N.J. Super. Unpub. LEXIS 139 (Law Div. May 8, 2015) (citations omitted) (Emphasis added). The Alpert court found that implied consent is "found when the bi-state agency voluntarily cooperates with New Jersey in the exercise of jurisdiction." Id. at 151, citing Ballinger v. Del. River Port Auth., 311 N.J. Super. 317, 328 (App. Div. 1998), *aff'd* 172 N.J. 586 (2002). An example of the Port Authority's implied consent to State jurisdiction was found in IMO American Honda Fin. Corp. v. One 2008 Honda Pilot, 24 Misc. 3d 745, 749 (Sup. Ct. 2009), in which the Supreme Court of New York found that the Port Authority's submissions conceded applicability of Section 184 of New York Lien Law.

The Port Authority has acquiesced to State laws in other contexts. For example, in its 2016 publication Traffic Rules and Regulations,¹³ the Port Authority advises motorists to consult with the

¹³ See The Port Authority of New York and New Jersey, Traffic Rules and Regulations for the Holland Tunnel, Lincoln Tunnel, George Washington Bridge, Bayonne Bridge, Goethals Bridge, Outerbridge Crossing, September 2016.

States of New Jersey, New York and New York City concerning the State or city's respective regulations. Regarding driver's licenses and registrations (section 2.3), the Port Authority advises, "No person shall operate a motor vehicle in or upon any part of a vehicular crossing unless he/she is duly authorized to operate motor vehicles in the state in which such part of the vehicular crossing is located. No motor vehicle shall be permitted in or upon any part of a vehicular crossing which is not registered in accordance with the provisions of the law of the state in which such part of the vehicular crossing is located." Regarding accident procedures (section 2.4), the Port Authority requires, "The operator of any vehicle involved in an accident . . . shall make a report of such accident in accordance with the law of the state in which such accident occurred." Regarding tunnels (section 5.2(d)(I)(1)), the weight limit for a vehicle of 22,400 pounds is raised to 32,000 pounds where a vehicle has proper permits from New Jersey [New York State or New York City.] Regarding emergency traffic restrictions (section 8), the Port Authority states that under appropriate circumstances, such restrictions may be instituted in cooperation with federal, state and local authorities.

Here, the Port Authority has consented, pursuant to the letter attached hereto as Exhibit 2.

C. The Division has exclusive jurisdiction over the liquor licensing at Newark Airport, Terminal B.

Pursuant to the 2015 OTG Order, the Division based its determination that it had the authority to issue liquor licenses at Terminal C because the terminal was a public building situated on public property owned by Newark, a political subdivision of the State of New Jersey. N.J.S.A. 33:1-42. The Division relies upon this same legal rationale to assert its jurisdiction to issue liquor licenses in Terminal B. *See* 2015 OTG Order.

Because 2/3 of Terminal B is located on property owned by Newark, a political subdivision of the State of New Jersey, N.J.S.A. 33:1-42 mandates that the Division is the exclusive issuing authority of SCPs at this location. *See also* 1947 Ground Lease between the City of Newark and the Port Authority of New York and New Jersey, Section 25, p. 256 (City of Newark is also the

owner of the Terminal B building). Therefore, based on the legal reasoning set forth in the 2015 OTG Order, the Division is now asserting its exclusive jurisdiction over the liquor licensing in Terminal B.

D. The Effect of the Division’s Assertion of License Issuing Authority at Newark Airport.

The effect of the instant Special Ruling is that all vendors who desire to sell and serve alcohol in Terminal B or have been selected through the Port Authority’s RFP process to sell and serve alcohol in New Terminal A must obtain SCPs through the POSSE online licensing system. *See* <https://www.njoag.gov/about/divisions-and-offices/division-of-alcoholic-beverage-control-home/licensing-bureau-applications-and-information/state-issued-wholesale-licenses/>.

Once the Division asserts its jurisdiction upon issuance of this Ruling, all current license holders in Terminal B will be required to obtain SCPs on or before July 1, 2023, and should begin to apply now to the Division for these permits if they desire to remain operational at the Airport. *See* N.J.A.C. 13:2-5.2. The municipally-issued licenses, which remain valid through June 30, 2023, will need to be placed in “pocket” status until such time as the licensee chooses to either sell it, or transfer and activate it at another location in Newark. The Division intends to work with the Newark ABC Board to ensure a seamless transition from the municipally-issued to the State-issued licenses, with no interruption in alcohol sales.

Regarding New Terminal A, once the successful vendors are identified by the Port Authority, these vendors must also apply to the Division for SCPs pursuant to N.J.A.C. 13:2-5.2. It is the Division’s intention to issue the SCPs in time for the opening of the new terminal. As with the licenses in Terminal B, the existing holders of municipally-issued licenses at the old Terminal A will have to pocket their licenses until such time as they choose to sell them, or transfer and activate them at another location within Elizabeth. Again, the Division will work with the Elizabeth ABC Board to ensure a smooth transition from the municipally-issued to the State-issued licenses.

As for the SCP application process, applicants must demonstrate their fitness and qualification to hold an alcoholic beverage license/permit in New Jersey. The Division will evaluate the applications in accordance with N.J.A.C. 13:2-5.2 and N.J.A.C. 13:2-9.2 and -9.3. *See also* IMO Xanadu, 415 N.J. Super. at 182. If an applicant fails to qualify, its application will be denied even if the applicant was selected as a vendor through the Port Authority's RFP process. Moreover, the Port Authority must authorize the sale and service of alcohol at the various locations throughout the Airport as part of the licensing process, which the Port Authority did during the licensing of OTG at Terminal C. N.J.A.C. 13:2-5.2(c)(1).

The Newark and Elizabeth ABC Boards will be notified of all SCP applications received by the Division. These Boards will have the opportunity to voice any concerns and have them addressed by the Division.

IV. Conclusion.

For the reasons set forth above and in the 2015 OTG Order, the Division shall be the exclusive issuing authority of liquor licensing at all terminals at Newark Airport. This determination will ensure uniformity, consistency, timeliness and accountability over the sale and service of alcoholic beverages throughout the Airport. The Division's actions will further the State's mandate to protect the health, safety and welfare of the people of this State and the millions of travelers going in and out of the Airport. In the coming months, the Division will continue to work with Newark and Elizabeth and their licensees, as well as the Port Authority, to ensure a seamless transition from municipal to State-issued liquor licenses and to safeguard the uninterrupted sale and service of alcohol at the Airport.


JAMES B. GRAZIANO
DIRECTOR

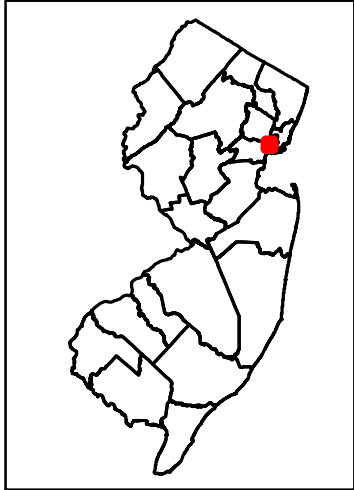
DATED: July 18, 2022
JBG/ABC

EXHIBIT # 1



DESCRIPTION OF EXHIBIT

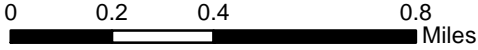
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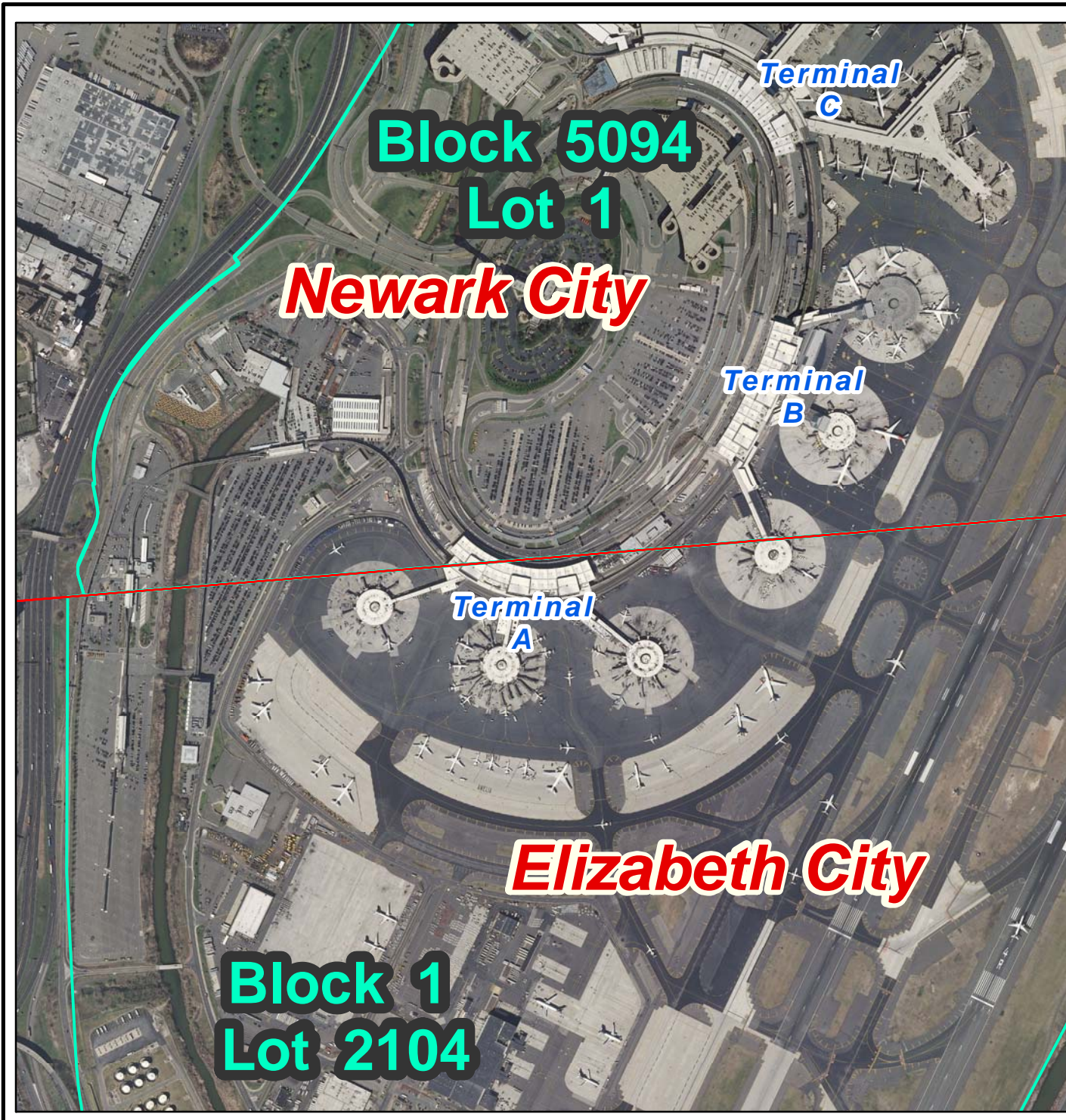
Newark Airport



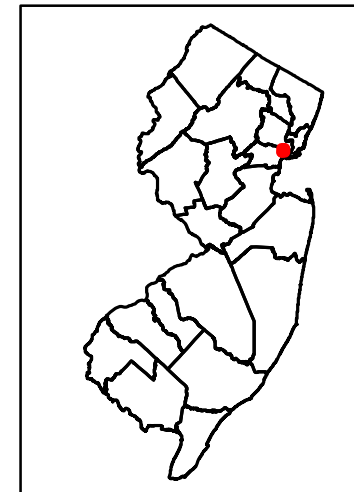
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-  Municipalities
-  Property in Question







Newark Airport



Legend

-  Municipalities
-  Property in Question

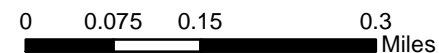


EXHIBIT # 2

DESCRIPTION OF EXHIBIT

PANYNJ Letter 6/30/2022

June 30, 2022

James B. Graziano, Director
State of New Jersey, Division of Alcoholic Beverage Control
P.O. Box 087
Trenton, New Jersey 08625-0087

Re: Regulation of Alcoholic Beverages at Newark Liberty International Airport

Dear Director Graziano:

The Port Authority of New York and New Jersey understands that the Division of Alcoholic Beverage Control (the “Division”), the City of Newark, and the City of Elizabeth have agreed that the Division will exercise exclusive regulatory jurisdiction with respect to alcohol sales and service in each of Terminals A, B, and C at Newark Liberty International Airport (the “Airport”). This is different than the current arrangement, pursuant to which Airport regulatory jurisdiction with respect to alcohol is shared between the Division, Newark, and Elizabeth.

As you know, the Port Authority is a public corporate instrumentality, created by the States of New Jersey and New York with the approval of the United States Congress, acting pursuant to the Compact Clause of the federal Constitution. As such, federal law sometimes imposes limits on the ability of one state’s regulatory authorities to exercise jurisdiction over a Port Authority facility. As one Court has put the matter, Port Authority facilities are not subject to the exercise of such jurisdiction unless: “(1) the [New Jersey-New York] compact [that created the Port Authority] explicitly provides for unilateral state action; (2) both states have complementary or parallel legislation; or (3) the bi-state agency impliedly consented to a single-state’s jurisdiction.” *Alpert v. Port Authority of New York and New Jersey*, 442 N.J. Super. 146, Superior Court of New Jersey, Law Division, quoting *Ballinger v. Del. River Port Auth.*, 311 N.J. Super. 317,324, 709 A.2d 1336 (App.Div.1998), *aff’d*, 172 N.J. 586, 800 A.2d 97 (2002) (citing *Int’l Union of Operating Eng. V. Del.River & Bay Auth.*, 147 N.J. 433, 445, 688 A.2d 569, *cert. denied*, [522 U.S. 861, 118 S.Ct. 165, 139 L.Ed.2d 108 \(1997\)](#)); see also, e.g., *Bunk v. Port Auth. of N.Y. & N.J.*, [144 N.J. 176, 184, 676 A.2d 118 \(1996\)](#); see also *Bell v. Bell*, [83 N.J. 417, 424, 416 A.2d 829 \(1980\)](#).

As to the first of these prongs, the Port Authority’s compact provides for development, construction and operation of the Airport. N.J.S.A. §§32:1-35:1 *et seq.*; enacted concurrently with identical New York State legislation, McKinney’s Unconsol. Laws §§ 6631 *et seq.* But the Compact does not provide for either state to exercise jurisdiction in connection with the regulation of alcohol beverage sales and service at the Airport.

As to the second of these prongs, there is no “complementary or parallel” New Jersey and New York legislation that provides for either state to exercise jurisdiction in connection with the regulation of alcohol beverage sales and service at the Airport.

As to the third prong, which relates to Port Authority “consent,” the Port Authority has determined to voluntarily cooperate with the Division, and consent to the Division’s exclusive jurisdiction over the regulation of the sale and service of alcoholic beverages at the Airport. A single regulator --- and one of the Division’s expertise and focus --- can help to ensure an especially streamlined and consistent process throughout the Airport.

The above-described consent is provided without prejudice to the Port Authority’s determining to withdraw such consent if, in the agency’s judgment, facts and circumstances change in the future; provided, that in view of the potential for confusion and disorder that might occur upon an abrupt withdrawal of consent, the Port Authority will provide written notice to the Division and other relevant stakeholders before any withdrawal of consent would become effective.

We appreciate the opportunity to work that much more closely with the Division at the Airport on a going forward basis. Please do not hesitate to contact the undersigned with any additional concerns.

Very truly yours,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY



By: Richard Cotton
Its: Executive Director