



## ADVISORY NOTICE NO. 20

### ECONOMIC DEVELOPMENT LICENSES OCTOBER 14, 2015

TO: All Retail Licensees and Municipalities

**Note: This notice is issued to replace in its entirety previous Advisory Notice No. 20 dated June 5, 2002.**

Act 141 of 2000 and Act 10 of 2002 first amended the Liquor Code to allow the Board to issue a restaurant or eating-place retail dispenser license for the purpose of economic development, even if the existing number of restaurant and eating-place retail dispenser licenses in a county exceeds one (1) license per three thousand (3,000) inhabitants. The purpose of this Advisory Notice is to answer questions frequently asked regarding economic development licenses.

#### 1. What is an economic development license?

An economic development license is a restaurant ("EDR") or eating place retail dispenser license ("EDE") which may be issued, even if the number of existing restaurant and eating place retail dispenser licenses in that county exceeds the ratio of one (1) license per three thousand (3,000) inhabitants. The purpose of the economic development license is to promote economic development.

#### 2. What are the criteria for applying for an economic development license?

Initially, a license will only be issued when an applicant has demonstrated that it has exhausted reasonable means of acquiring a license in the county. The Board has, by regulation [40 Pa.Code 3.105], set forth what evidence an applicant must prove in order to establish that it has "exhausted reasonable means."

In order to establish it has "exhausted reasonable means, an applicant must prove that it:

- Contacted existing license holders and inquired as to the availability for the license to be purchased.
  - In class 1 through 4 counties, an applicant must contact a minimum of fifty percent (50%) of the existing licenses.
  - In class 5 through 8 counties, an applicant must contact a minimum of seventy-five percent (75%) of the existing licenses.
  - An applicant need only contact that license type for which an applicant seeks to purchase. For example in a class 1 county an applicant for an EDR license would be required to contact fifty percent (50%) of the existing restaurant license holders. However, if the applicant was seeking an EDE license, an applicant would only have to contact fifty percent (50%) of the existing eating place malt beverage license holders.
- Attempted to purchase a license held in safekeeping at the time the application was filed.
- Provide an explanation as to why it is not economically feasible for the applicant's business to buy a license on the open market.

- Provide a written estimation of the expected economic benefits to the municipality.

Additionally, economic development licenses may only be issued to premises that are located in an Enterprise Zone as designated by the Department of Community and Economic Development, a Keystone Opportunity Zone as established under the authority of the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act, or in a municipality where the municipality has voted to grant the issuance of such a license for the purpose of economic development. There is a surcharge of fifty thousand dollars (\$50,000) for an economic development license if the proposed premises is located in a county of the first through fourth class. There is a surcharge of twenty-five thousand dollars (\$25,000) for an economic development license if the proposed premises is located in a county of the fifth through eighth class.

**3. Are there any additional restrictions imposed on economic development licenses?**

Yes. The Board is limited to issuing no more than two (2) economic development licenses in each county of the first through fourth class each calendar year. The Board is limited to issuing no more than one (1) economic development license in each county of the fifth through eighth class each calendar year. In addition, economic development licenses are not transferable. This means that it is impermissible to attempt to transfer the license to either a new location or a new owner. However, it would be permissible for a new owner to buy the corporation currently holding an economic development license; the new owners would need to notify the Board of this by filing with the Board a Notice of Change in Officers, Directors, Stockholders or Managers form PLCB-866.

Additionally, economic development licensees may only be renewed or validated if the holder can show that its sales of food and non-alcoholic beverages are equal to seventy percent (70%) or more of its sales of food and alcoholic beverages, during the preceding year.

**4. Since an applicant has not sold any alcohol when it initially applies for an economic development license, how does it establish the necessary ratio for acquiring an economic development license?**

When an application is approved, the applicant will receive a provisional license good for one hundred twenty (120) days. Prior to the expiration of the one hundred (120) days, the applicant must submit another application to the Board indicating that for a period of ninety (90) consecutive days since the granting of the provisional license, its sales of food and non-alcoholic beverages were equal to seventy percent (70%) or more of its sales of food and alcoholic beverages. At that point, the Board will issue a permanent license good for the remainder of the licensing term.

**5. How are applications for economic development licenses processed, i.e., what if multiple applications are filed within the same county?**

The Bureau of Licensing will accept applications for economic development licenses on a quarterly basis. For example, applications filed from January 1 to March 31 will be considered together and if there are insufficient licenses for all of the qualified applications, the Board will decide from among the qualified applicants who will be given the license. If any licenses remain after the applications received in the first quarter have been processed, then the Board will consider applications received during the second quarter, i.e., April 1 to June 30, and so on. Upon the end of the calendar year, the cycle begins again.

**6. What happens to the application surcharge of \$25,000 or \$50,000 if the application is refused?**

If an application for an economic development license is refused prior to the Board's issuance of a provisional one hundred twenty (120) day license, then the application surcharge, minus a seven hundred dollar (\$700) processing fee, is refunded to the applicant. An example of why an applicant would not get a provisional license could be that more applicants applied for a license than there were licenses to be given. If the application is refused after the issuance of the provisional license, then no portion of the application surcharge is refunded. An example of this would be if the applicant failed to establish that for a period of ninety (90) consecutive days, its sales of food and nonalcoholic beverages are equal to seventy percent (70%) or more of its sales of food and alcoholic beverages. Please note that the manner in which the application surcharge is handled is set forth by the legislature through statute.

**7. Does a municipality have any standing to challenge the issuance of an economic development license?**

Yes, sections 404 and 432 of the Liquor Code allow a municipality to protest the issuance of any economic development license regardless of the number of licenses already located in the municipality. The Board has been authorized to refuse an economic development license application if the receiving municipality files a protest to that application. In addition, section 464 of the Liquor Code grants a municipality standing to take an appeal of any decision involving an economic development license application.

Further, if the number of existing retail licenses in the municipality is equal to or exceeds one (1) license per three thousand (3,000) inhabitants, then the applicant must receive municipal approval prior to submitting its application with the Board. For additional information on the procedure for acquiring municipal approval, please see Advisory Notice No. 19.

**BY ORDER OF:  
PENNSYLVANIA LIQUOR CONTROL BOARD**

A handwritten signature in black ink that reads "John K. Stark". The signature is written in a cursive, flowing style.

**JOHN K. STARK**  
Secretary to the Board