



March 16, 2009

Ms. Joanne Tetlow, Esquire
Comptroller of Maryland
Director's Office, Room 315
80 Calvert Street
Annapolis, Maryland 21401

Dear Ms. Tetlow:

I recently received a telephone call from one of our members regarding a notice received from their local Clerk of the Circuit Court informing all license holders about a required soda fountain license. Like the member restaurant that contacted me, I was surprised to learn of such a license, which I have never heard of during my seven-year tenure with the Association.

After researching this issue, I discovered a soda fountain license was originally created by the General Assembly in 1916. At the time, I'm sure such fountains were associated with drugstores, five-and-dime (variety) stores and soda shops. Such venues may not have been the fully-licensed foodservice facilities of today that fall under the control of local health departments.

1916 Laws of Maryland, Chapter 704

Each person, firm or corporation operating a soda fountain in this State shall before doing so, take out a license therefor for the privilege of conducting such business and paying an annual license fee of \$6.00 for each fountain so operated in the City of Baltimore or in each county of this state.

According to a copy of a letter shared with us by the State License Bureau, Clerks of Circuit Court are asked to notify license renewal applicants of the soda fountain license requirement, with the issuing fee at the discretion of the Clerk.

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Restaurant Association of Maryland

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We have been unable to find a legislative definition of “soda fountain” in existing law. The only reference to a definition we were able to locate is from a 1962 Attorney General letter of opinion that takes a definition from Funk and Wagnall’s New Standard Dictionary of the English Language. I am not certain if this is the definition used by the 1916 General Assembly that created this law, as the original law seems to refer to soda fountain as a type of business as opposed to a type of device (as implied in the dictionary definition).

We question the legality of continuing to require such a license without a clear legislative definition, especially since the current regulation of businesses operating fountain devices falls under the purview of a locally-issued foodservice facility license. Please identify any soda fountain license issues that have not been rendered obsolete by the current and broader foodservice facility license.

Moreover, in reviewing the recent issuance of such licenses in local jurisdictions, it seems that many jurisdictions either have not issued such licenses in recent years or have issued them only for those older businesses that had traditionally held such licenses. It does not appear that most jurisdictions are issuing them for newly opened businesses. Perhaps the local issuing authorities also recognize this license as being obsolete.

We realize that there are literally thousands of obsolete laws that remain on Maryland’s books. Please explain the rationale behind the decision to re-enforce this law as opposed to others. Have there been recent issues with soda fountains?

Thank you for your consideration of our concerns. We look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Melvin R. Thompson". The signature is written in a cursive style and is followed by a long, horizontal flourish line.

Melvin R. Thompson
Senior Vice President
Government Affairs and Public Policy

cc: Leonard Foxwell, Deputy Comptroller