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CONFIDENTIAL

June 18, 2013

The Honorable Brian K. McHale
350 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate McHale:

You have asked for advice concerning Article 2B, § 10-503(d)(4), which states that the transfer of an alcoholic beverages license "shall be completed" within 180 days after the approval of the transfer. Specifically, you have asked whether this provision is mandatory or directory. It is my view that it is mandatory, and that if the transfer is not completed, the authorization for the transfer lapses.

Article 2B, § 10-503(d)(4), added by Chapter 56, Laws of Maryland 2000, provides that "a transfer of any license shall be completed not more than 180 days after the Board approves the transfer." The term "shall" is ordinarily presumed to indicate a mandatory duty, and has been employed synonymously to foreclose discretion. *Engineering Management Services v. Maryland State Highway Administration*, 375 Md. 211, 234 (2003). The term remains subject, however, to the ordinary rules of statutory construction, in which the main aim is to determine the intent of the legislature. *Resetar v. State Board of Education*, 284 Md. 537, 547 (1979). Thus, the word "shall" is, in some instances, interpreted to be directory rather than mandatory. *G&M Ross Enterprises v. Board of License Commissioners*, 111 Md. App. 540, 543 (1996). One circumstance when this occurs is where the statute provides no penalty for failure to act within a prescribed time. *Id.* The term "shall" is also commonly interpreted as directory when it is found in a constitutional provision or enactment appearing to impose a duty on a court. *Heit v. Stansbury*, 199 Md. App. 155, 158-159 (2011).

In this instance, no constitutional provision is involved, and the provision places no duty upon a court. Moreover, while the statute does not expressly state it as a consequence, it seems clear that if the transfer "shall be completed" within 180 days, it cannot be completed after that date, indicating that the consequence is the lapsing of the authority for the transfer. There is nothing in the legislative history that contradicts the conclusion that provision is intended to be mandatory. The title states that the bill "requires that the transfer of an alcoholic beverages license in Baltimore City be completed not more than 180 days after approval from the Board of Liquor License Commissioners is received." The Fiscal Note reflects that there was at that time "no statutory time frame in which the approved transfer must take place," and repeats the language of the title. There

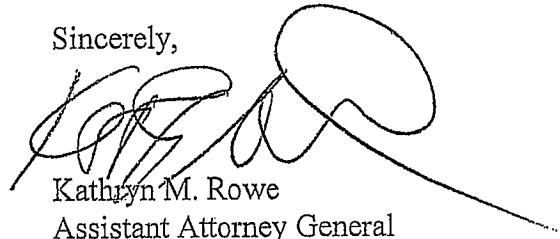
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is no written testimony.

The only remaining piece of legislative history relevant to the issue is an amendment added in the Education, Health and Environmental Affairs Committee. That amendment repealed provisions of Article 2B, § 10-504(d), under which a licensee could place a license "on deposit" with the Board of License Commissioners during a period when the licensee was unable to remain open. The license would lapse, however, if it remained inactive for 180 days unless an application for transfer or for permission to continue business after death of the licensee was either pending or had been granted. The amendment enacted new language with similar effect, except that it permitted the Board of License Commissioner to grant an extension of 180 days (for a total of 360 days) "due to undue hardship." The adoption of an express authorization for hardship extensions for licensees, without adopting a similar authorization for hardship extensions for transferees, indicates that it was not intended that the Board have this authority with respect to license transfers.

For the above reasons, it is my view that the 180 day limit in Article 2B, § 10-503(d)(4) is mandatory.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathryn M. Rowe', with a long, sweeping underline that extends to the right.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
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