



STATE OF DELAWARE

**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
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St. Georges Liquors, LLC	:	
t/a St. Georges Liquors	:	
1600 South DuPont Highway	:	<b><u>DECISION AND ORDER</u></b>
New Castle, DE 19720	:	on Legal Hearing held
License No. 15278	:	November 16, 2021

SUMMARY OF EVIDENCE PRESENTED

Background

1. The above entity (“Applicant”) filed an application for a package store license, to include Sunday sales, and a tasting permit, on September 18, 2019 with the Office of the Alcoholic Beverage Control Commissioner (“OABCC” or “Office”).

2. A valid protest was filed against the application, requiring a public hearing on the application. 4 Del. C. § 541.

3. The Commissioner held a public hearing on November 16, 2021 at 5 p.m. via Webex in accordance with Delaware law. The hearing was held to consider a limited threshold legal question whether 4 Del. C. § 543(f)(2), enacted after the Applicant submitted its application for license, prohibited issuance of the license. The hearing lasted 2.5 hours.

4. Section 543(f)(2) states: “the Commissioner shall refuse to grant a license to sell alcoholic liquor to any new store located in an unincorporated area on or along any state highway listed in § 701(d) of Title 21 within 1 ½ miles of a Department of Motor Vehicles’ facility on or along the same highway.”

5. Melvyn A. Woloshin, Esq. and Diane M. Coffey, Esq. represented the Applicant and appeared on Applicant's behalf.

6. Numerous protestors and concerned citizens participated in the hearing on November 16, 2021.<sup>1</sup>

7. Two recesses were taken during the hearing to assist concerned citizens who were interested in participating in the hearing, but reportedly having difficulty doing so.

8. The notice of the hearing sent to the Applicant and protestors and the notice of the hearing, published in two newspapers and posted to the state's website, permitted written submissions with the Office on the threshold legal question by November 8, 2021.<sup>2</sup>

9. Only the Applicant submitted a position statement by November 8, 2021. During the hearing, the Commissioner stated that those protestors and concerned citizens who wished to submit a written statement after the hearing could do so by December 1, 2021.<sup>3</sup>

10. The Commissioner received four written statements from concerned citizens as of December 1, 2021.

#### Contentions of the Parties

11. In its written submission, counsel for the Applicant argued that Section 543(f)(2) did not prohibit issuance of the license because:

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<sup>1</sup> A "party" is defined by the Administrative Procedures Act as "each person or agency named or admitted in any agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to an agency proceeding." 29 Del. C. § 10102(g). A person acting as a "party" at a hearing would be evidenced by the person's actual participation as a member of a group, testifying, cross-examining witnesses, and arguing a position. *Newsome v. Delaware Alcoholic Beverage Control Comm.*, 1993 WL 258712, at \*2 (Del. Super. July 1, 1993). In the present matter, the Commissioner finds those who participated in the hearing are "parties."

<sup>2</sup> The Applicant's counsel submitted a letter, dated November 8, 2021, per this request. ("Applicant Letter").

<sup>3</sup> The Commissioner also informed that if a member of the Delaware Bar submitted a written statement by December 1, the Applicant would have the ability to reply. No Delaware lawyer submitted a written statement by this date. Thus, no reply from the Applicant was needed.

- a. Applicant argued the application was submitted on September 18, 2019, preceding the introduction of Senate Bill 200 (“SB 200”) on June 28, 2021 and its effective date of June 30, 2021, and that, but not for the Covid-19 pandemic, the application presumably would have been concluded before the introduction of SB 200.
- b. Applicant argued SB 200 should have contained language in its synopsis that it was not applicable to applications already filed with the Commissioner and that it grandfathered existing licensees into the current process; SB 200 must be read in *pari materia* with other changes to Section 543 in the last two to three years, including Senate Bill 56 which changed the distance requirement in Section 543 in 2019 and did contain a grandfather clause.
- c. Applicant argued SB 200 was a Bond and Capital Improvements Act Bill. The only statutory amendment in this bill was to Section 543(f)(2), with no synopsis or explanation. No other provision in Section 543 utilizes a distance of 1 ½ miles. The measurement of 1 ½ miles was used to directly harm the Applicant in its desire to obtain a package store license at this proposed site, and as such is an impermissible use of the state’s police powers by directly targeting its application.
- d. Applicant argued it has vested rights in this application and satisfies the two-prong test set forth in *Ocean Bay Mart, Inc. v. City of Rehoboth Beach, Delaware*.<sup>4</sup> The two-prong test consists of (a) public interest and (b) developer’s reliance on a prior ordinance. Applicant argued there are no reasonable public interest factors and no reasonable public safety interests behind the bill or the application; the Applicant argued the first prong overwhelmingly falls in its favor. In addition, the Applicant

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<sup>4</sup> *Ocean Bay Mart, Inc. v. City of Rehoboth Beach, Delaware*, 2021 WL 4771246 (Del. Ch. Oct. 13, 2021)(Mem.Op.), *rearg. denied*, 2021 WL 5367727 (Del. Ch. Nov. 18, 2021).

argued it satisfies the second prong, in that it had a reasonable, good faith reliance upon the governmental assurances (the statutes in place at the time of its application, its own knowledge of the placement of liquor stores in relation to an existing package store and to pertinent state facilities), that the intended use of the property is permitted under Section 543 as codified on the date of the application, September 18, 2019.

12. During the hearing, counsel for Applicant presented testimony explaining why Section 543(f)(2) does not apply to the application, consistent with the summary provided in paragraph 11 above. Applicant stated there was nothing in the record that says Applicant's proposed liquor store was 1.5 miles from a Department of Motor Vehicles facility, but Applicant's submission stated: "It is no coincidence that the proposed St. George's Liquors at 1600 DuPont Highway, is within 1 ½ miles of a Division of Motor Vehicles Facility."<sup>5</sup>

13. Counsel for Applicant stated there was no testimony on the public interest necessitating the change to Section 543(f) when SB 200 was considered.

14. Counsel for Applicant also argued Applicant has a vested right in the application process to obtain the license, and that the law that applies to the application is the law in existence at the time of the filing of the application.

15. Counsel for Applicant also testified that Applicant worked with the Delaware Department of Natural Resources and Environmental Control (DNREC) to remediate the property and had plans drafted to modify the building in furtherance of its position that it has a vested right in the application process.

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<sup>5</sup> See Applicant Letter, page five.

16. During the hearing, protestors and concerned citizens argued Section 543(f)(2), effective June 30, 2021, applied and therefore this Office must deny the application.

17. State Representative Valerie Longhurst testified that she wanted an attorney from each body of the Delaware General Assembly present to address questions regarding SB 200 and to offer argument why the statute is valid. State Senator Nicole Poore noted the property at issue for the application is a brownfields site (presumably a reference to the Environmental Protection Agency's Brownfields and Land Revitalization Program) and questioned whether Applicant received federal funds towards remediation of the property.

18. Several concerned citizens testified that the law in effect currently is the law that should be followed, and that the new law is socially responsible.

19. The four written statements, submitted by December 1, echo this argument. Specifically, the citizens object to the Applicant's application for a liquor store at the intersection of Cox Neck Road and U.S. Route 13. The citizens stated the law currently in effect was written to protect people, places and things and deters the granting of the license. Concerned citizens noted the proposed location for Applicant's liquor store meets the standards of the current statute and noted there was no grandfather clause in SB 200.

20. The Commissioner reserved decision on the limited legal issue, after receipt and consideration of post-hearing written submissions.

#### FINDINGS OF FACT

This Office makes the following findings of fact based upon the evidence presented, pursuant to 29 Del. C. § 10128(b)(2):

1. The Applicant stated in its November 18, 2021 position statement, made a part of the record during the hearing, that the property in question was within 1.5 miles of a Delaware Department of Motor Vehicles facility.

2. There was no evidence to the contrary.

3. Concerned citizens testified that the Applicant's property for which Applicant submitted a request for liquor license was on or along U.S. Route 13 - also known as South DuPont Highway - as the Department of Motor Vehicles facility on or along the same highway.

4. U.S. 13, also known as South (or S.) DuPont Highway in New Castle, Delaware, is a state highway listed under 21 Del. C. § 701(d).

5. There was no evidence presented to the contrary that the property in question is on or along U.S. 13, the same highway as a Delaware Department of Motor Vehicles facility.

6. Therefore, the property in question upon which the Applicant seeks a liquor license is within 1.5 miles of a Delaware Department of Motor Vehicles facility located on or along the same highway, U.S. 13.

#### CONCLUSIONS OF LAW

This Office makes the following legal conclusions pursuant to 29 Del. C. § 10128(b)(3):

1. The Commissioner may grant, refuse, or cancel licenses as required by the Delaware Liquor Control Act ("Act"), but she is not empowered to reject an application unless the applicant has failed to comply with statutory requirements or unless the Commissioner has reasonable grounds to believe that a statutory basis to refuse exists. 4 Del. C. § 304(a)(4).<sup>6</sup>

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<sup>6</sup> *Park Distributing Co. v. Delaware Liquor Comm.*, 54 A.2d 551, 557 (Del. 1947).

2. A protest is a jurisdictional requirement to cause a hearing to be held for evidence to be presented on the record and is not in itself material evidence of opposition.<sup>7</sup> In this case, numerous protest letters were submitted to this Office. A public hearing was held for this Office to consider the limited legal threshold issue whether 4 Del. C. § 543(f)(2), enacted after the Applicant submitted its application for license, prohibits issuance of the license.

3. The requirements for a liquor store license are set forth generally in 4 Del. C. §§ 511 and 512. Title 4 also requires that an application must be refused for various reasons as stated in Section 543. One such basis is Section 543(f)(2), as of June 30, 2021:

the Commissioner shall refuse to grant a license to sell alcoholic liquor to any *new store* located in an unincorporated area on or along any state highway listed in § 701(d) of Title 21 within 1 ½ miles of a Department of Motor Vehicles' facility on or along the same highway. (Emphasis added)

4. In the present matter, it is undisputed that the Applicant's proposed store is located on or along U.S. 13 also known as South DuPont Highway and within 1 ½ miles of a Delaware Department of Motor Vehicles facility also on or along the same highway. The Applicant conceded this point when it stated, "It is no coincidence that the proposed St. George's Liquors at 1600 DuPont Highway is within 1 ½ miles of a Division of Motor Vehicles Facility."<sup>8</sup>

5. This Office concludes that 4 Del. C. § 543(f)(2), enacted after the Applicant submitted its application for license, prohibits issuance of the license for the reasons stated below.

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<sup>7</sup> *Alfred I. duPont Sch. Dist. v. Delaware Alcoholic Beverage Control Comm.*, 343 A.2d 600, 603 (Del. Super. 1975).

<sup>8</sup> See Applicant Letter, page five.

A. Legislative Change to Section 543(f) of Title 4

6. Senate Bill 200 (SB 200) was signed into law by Governor John Carney on June 30, 2021.

On page 46 of SB 200, the following text, noted by underline, was added to § 543 of Title 4 of the Delaware Code:

(f)(1) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any restaurant or eating place located on or a part of the Delaware Turnpike.

(2) The Commissioner shall refuse to grant a license to sell alcoholic liquor to any new store located in an unincorporated area on or along any state highway listed in §701(d) of Title 21 within 1 ½ miles of a Department of Motor Vehicles' facility on or along the same state highway.<sup>9</sup>

7. The issue presented before this Office is a matter of statutory interpretation. The principles of statutory construction require this Office to first determine whether there is any reasonable doubt as to the meaning of words in a statute.<sup>10</sup> Language is "ambiguous only when it is reasonably susceptible to different conclusions or interpretations."<sup>11</sup>

8. If no ambiguity exists, then the general rule is "[t]o ascertain and to give effect to the intent of the legislature. If there is no reasonable doubt as to the meaning of words used, the statute is unambiguous and the Court's role is limited to the application of a literal [or plain] meaning of the words. In performing this analysis, the words in the statute or rule are given their common, ordinary meaning."<sup>12</sup>

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<sup>9</sup> “ ‘State highways,’ as used in subsection (c) of this section, include the following: (1) U.S. 13 ....” 21 *Del. C.* § 701(d).

<sup>10</sup> See *Hudson Farms v. McGrellis*, 620 A.2d 215, 217 (Del. 1993)(holding “[a] court must first determine whether a statutory provision is ambiguous”).

<sup>11</sup> *State v. Cooper*, 575 A.2d 1074, 1075 (Del. 1990).

<sup>12</sup> *McGrellis*, *supra*, at 217.



9. “Store” is an undefined term in the Delaware Liquor Control Act, but for purposes of this opinion, the Office has determined that “store” in the context of the legislation refers to an establishment licensed for the sale of alcoholic liquors not for consumption on the premises where sold, as set forth in 4 Del. C. § 516.

10. Following the principles of statutory construction, the words “new store” in the provision added to § 543(f)(2) must be given their plain, ordinary meaning. The plain meaning of “new” is “not existing before” according to the Oxford Learners Dictionary Online.<sup>13</sup> The General Assembly did not use the words “existing store” or “existing licensee” or even “all stores”. The use of the word “new,” given its common ordinary meaning, is interpreted to apply to those stores that are not yet in existence, and excludes those stores already in existence. This point is further reflected in the use of “new license” and “extension of premises of an existing licensee” to refer to different licensees in § 543(g), which sets forth the process the Commissioner must go through to confirm zoning and political subdivision compliance. As applied in this context, it is clear the Applicant’s request for license of its store is a new store which does not yet exist. Under the principles of statutory construction, the statute applies to the Applicant’s request for license because SB 200 only applies to stores that are not yet existing or operating as of the date SB 200 became effective. In other words, the prohibition applies to any store that is not existing or operating at the time, regardless of the pendency of any application. To read SB 200 otherwise would ignore the term “new store” and render it meaningless.

11. The Applicant argued during the hearing, and in a submission filed with this Office, that the application preceded the introduction and passage of SB 200 and for these reasons the statute does not apply to its application. It is true the Applicant submitted its application on September

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<sup>13</sup> See <https://www.Oxfordlearnersdictionaries.com/us/definition/english>.

18, 2019, before introduction and passage of SB 200. Protests were filed between September 25, 2019 and October 22, 2019, containing dozens of signatures of concerned citizens, triggering the OABCC’s statutory obligation to conduct a hearing pursuant to 4 *Del. C.* § 541. The Applicant suggests a hearing on the application was delayed due to COVID, which may account for part of the delay, but the Office takes notice that the Applicant delayed this matter by not providing all necessary documents in support of the application in a timely manner and requested a continuance for a hearing that was originally scheduled in December 2020.<sup>14</sup>

12. Applicant argued that the General Assembly must have intended a grandfather clause for the legislation which would exempt its application to “existing licensees into the current process.”<sup>15</sup> “A grandfather clause is a form of a savings clause that makes a statutory change inapplicable to persons whose rights were established, or to situations that occurred, before the date of change.”<sup>16</sup> However, the use of “new” before “store” reflects the General Assembly’s clear intent that the new law does not apply to existing stores, only “new stores” not yet existing like the Applicant’s store, and therefore there was no need to include a grandfather clause for existing stores.

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<sup>14</sup> See email dated November 16, 2020, from Applicant’s counsel’s staff to the OABCC:

“I am respectfully requesting a continuance of the protest hearing that is scheduled for December 1, 2020, in the matter of the St. George’s Liquors protest filed against my client’s application for a package store liquor license.

Unfortunately, I am not fully prepared to go forward with this hearing at present because of several reasons. First, I moved from Wilmington to Rehoboth Beach, which took up more time than anticipated, and secondly, I have had some problems with my client getting documents to me in order to go forward with the hearing.

Therefore, I am respectfully requesting a continuance of this hearing and my client will be responsible for ay [sic] costs in connection with rescheduling this protest hearing.

Thank you for your kind courtesy.

Respectfully submitted,

Mel”

<sup>15</sup> See Applicant’s submission at page 2.

<sup>16</sup> Delaware Legislative Drafting Manual (January 2019), at 26.

13. By way of comparison, Senate Bill 56 (“SB 56”) from the 150<sup>th</sup> General Assembly, signed into law in 2019, changed the distance requirement for the issuance of licenses for establishments licensed to sell alcoholic liquors for off premises consumption, and included express language in the synopsis stating: “This Act grandfathers existing licensees into the current process.” The inclusion of this language evidenced the General Assembly’s intent that existing licensees operating legally under the prior distance requirement would not lose their licenses because of passage of SB 56.

14. If the General Assembly intended a similar result with SB 200, the General Assembly would have included language in SB 200’s synopsis that would grandfather applicants into the current process. Without that language, this Office concludes that there is no provision in SB 200 that exempts its application to the facts of this matter, and therefore the Office must apply §543(f)(2) to this application.

15. Applying the principles above, this Office has a mandatory duty to deny licenses that do not satisfy the criteria of § 543(f)(2). The term "shall" used in § 543(f)(2), "[i]s considered presumptively mandatory unless there is something in the context or the character of the legislation which requires it to be looked at differently."<sup>17</sup> There is no authority that overcomes the presumption that the term "shall" in § 543(f)(2) is mandatory. Further, a provision will more likely be considered mandatory when it relates to a "public benefit, good, interest, or protection."<sup>18</sup> If a statutory provision is considered mandatory, then strict interpretation of the statute is required.<sup>19</sup>

16. The Applicant did not argue that the statutory language added to § 543(f) by SB 200 is ambiguous. While the Applicant takes issue with how the language became law and whether

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<sup>17</sup> 3 Sutherland Statutory Construction 5702 (5<sup>th</sup> ed); *Delaware Citizens for Clean Air v. Water and Air Resources Comm.*, 303 A.2d 666 (Del. Super. 1973).

<sup>18</sup> Sutherland, *supra*.

<sup>19</sup> *Id.*

insertion in a larger bill was proper, that is not for this Office to decide. This Office is charged with applying the law, as it is written in the Code, to the facts before it. Based upon the above, this Office determines that § 543(f)(2) is a mandatory provision that cannot be waived and that a plain meaning of the statute is appropriate. Because the legislation is clear that this Office shall refuse to grant a license to a new store “located in an unincorporated area on or along any state highway listed in §701(d) of Title 21 within 1 ½ miles of a Department of Motor Vehicles’ facility on or along the same state highway” and the evidence reflects that the proposed premises upon which Applicant seeks to operate a new liquor store is within 1.5 miles along the same state highway – U.S. 13 also known as South DuPont Highway -- as a Department of Motor Vehicles facility, this Office has determined to deny the application.

#### B. No Vested Right to a Liquor License

17. The Applicant attempts to avoid application of the plain meaning of the statute by arguing that it has a vested right in the liquor license process, analogizing legal principles applied in land use cases to determine if a property owner has a protected property interest.<sup>20</sup> Reliance on that line of authority is misplaced, however, because Delaware law is well-established that a liquor license is not a property right, but rather is a privilege. “A license to sell alcoholic liquor is not “property” in any legal or constitutional sense; no right arising from a contractual relationship is conferred on the licensee.”<sup>21</sup> “It is a mere temporary permit issued under the authority of the State in the exercise

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<sup>20</sup> See generally *Croda, Inc. v. New Castle County*, 2021 WL 5027005 (Del. Ch. Oct. 28, 2021); *Ocean Bay Mart, Inc. v. City of Rehoboth Beach*, 2021 WL 4771246 (Del. Ch. Oct. 13, 2021), *rearg. denied*, 2021 WL 5367727 (Del. Ch. Nov. 18, 2021).

<sup>21</sup> *Down Under Ltd. v. Delaware Alcoholic Beverage Control Comm.*, 576 A.2d 675, 679 (Del. Super. 1989)(citing *Darling Apartment Co. v. Springer*, 22 A.2d 397, 401 (Del. 1941); *accord State Highway Dept. v. 0.622 Acres of Land, et al.*, 254 A.2d 57, 58 (Del. Super. 1969)).

of its police power to do that which otherwise would be unlawful.”<sup>22</sup> In other words, a liquor license is “nothing more than a ‘personal privilege’ and not such a ‘property right’ as the Constitution would protect ....”<sup>23</sup>

[T]he manufacture and sale of intoxicating liquors is not an inherent or constitutional right. It is merely a privilege which the State may grant, or which it may take away or which it may regulate. The manner and extent of the regulation rests within the sound discretion of the granting authority. Under proper rules and regulations, it may even grant such authority to some and deny it to others.<sup>24</sup>

18. A liquor license is not “one of the privileges and immunities of citizens of the U.S., and no vested right exists to obtain a liquor license which may not be reasonably circumscribed by the Legislature in the exercise of the general police power.”<sup>25</sup> “The right of the licensee can rise no higher than the terms of the law under which the license is issued; and the licensee accepts the privilege subject to such conditions, including the cause and manner of revocation or suspension as the Legislature may see fit to impose.”<sup>26</sup> Indeed, the Delaware Superior Court, relying upon the above principles, concluded that it could not give relief in an eminent domain action, by “judicially declaring the permission to operate a retail liquor store is a Constitutional property right ....”<sup>27</sup> The Court reasoned, without deciding, that even if the facts were enough to create an exception to the general rule that a condemnation did not take a business but only the real estate, the liquor laws preclude such a finding because permission to operate a retail liquor store “is not

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<sup>22</sup> *Down Under, supra*, at 679; *0.622 Acres of Land, supra*, at 58.

<sup>23</sup> *Darling Apt. Co., supra*, at 401.

<sup>24</sup> *Demarie v. Delaware Alcoholic Beverage Control Comm.*, 143 A.2d 119, 122 (Del. 1958).

<sup>25</sup> *United Cigar-Whelan Stores Corp. v. Delaware Liquor Comm.*, 15 A.2d 442, 446 (Ct. Gen. Sess. 1940).

<sup>26</sup> *Darling, supra*, at 401.

<sup>27</sup> *0.622 Acres of Land*, 254 A.2d at 57-58 (“Unfortunately every licensee in the liquor business runs the substantial risk that his permit may be eliminated for a number of reasons.”).

‘property in a Constitutional sense....’” which would permit relief for loss of a liquor license under Article 1, Section 8 of the Delaware Constitution.<sup>28</sup>

19. Because there is no vested right in a liquor license, this argument is not persuasive.

### C. Proper Exercise of the State’s Police Powers

20. Alternatively, the Applicant argues that SB 200 is an impermissible use of the state’s police powers “and appear[s] to have targeted one person and one person only” – the Applicant.<sup>29</sup> A State has broad power under the Twenty-first Amendment to regulate the times, places and circumstances under which liquor may be sold.<sup>30</sup> Under the police powers of the State, the Delaware General Assembly has broad regulatory powers over the manufacture, distribution, sale and transportation of alcoholic liquors in Delaware.

*The Legislature must declare the policy of the law, and must establish some principle or rule of action which is to control in given cases. In other words, the Legislature must provide an adequate yardstick for the guidance of the administrative body empowered to execute the law .... The Act attempts to establish controls for the liquor business in its various aspects. It permits that business to be carried on by private enterprises subject to numerous conditions and regulations.*<sup>31</sup>

21. The purpose of Delaware’s liquor laws is to make liquor available, but under rigid control at all times in the interest of the general welfare.<sup>32</sup> The Commissioner and her authority exist by

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<sup>28</sup> *Id.* (citing *Demarie v. Delaware Alcoholic Beverage Control Comm.*, 143 A.2d 119, 122 (Del. 1958); *Darling Apartment Co. v. Springer*, 22 A.2d 397, 401 (Del. 1941)).

<sup>29</sup> See Applicant’s written submission, at page 6. If the Applicant intends to argue that the statute targets it and is unconstitutional, this Office will not opine on that argument. The Office does not have the authority to determine whether a statute is constitutional.

<sup>30</sup> *New York State Liquor Auth. v. Bellanca*, 452 U.S. 714, 715 (1981).

<sup>31</sup> *Lyons v Delaware Liquor Comm.*, 58 A.2d 889, 894 (Ct. Gen. Sess. 1948)(emphasis added).

<sup>32</sup> *Wilmington Country Club v. Delaware Liquor Comm.*, 91 A.2d 250, 254 (Del. Super. 1952); see also *State Highway Dept. v. 0.622 Acres of Land, et al.*, 254 A.2d 57, 58 (Del. Super. 1969)(State has “peculiar and exclusive control over alcoholic liquors”).

creation of statute and power delegated by the Delaware General Assembly.<sup>33</sup> This Office's role is to regulate the alcoholic beverage industry in Delaware, as set forth in the Delaware Liquor Control Act ("Act") and related Regulations, including the authority to "grant, refuse or cancel licenses required by this title for the manufacture or sale of alcoholic liquor ...."<sup>34</sup> Therefore, this Office cannot conclude the existence of an impermissible use of the State's police powers as the law affords.

22. Based upon the evidence presented, this Office concludes Section 543(f)(2) applies to this application and prevents this application from being approved, as the proposed store is within 1 ½ miles of a DMV facility on or along the same State highway as found in 21 Del. C. § 701(d), being U.S. 13 also known as South DuPont Highway. Thus, this Office does not reach (nor need to reach) any discussion about the underlying merits of the application, nor the anticipated objections of the protestors and concerned citizens.

#### DECISION AND ORDER

IT IS THIS 23rd day of December, 2021, the Decision and Order of this Office that the application for a liquor store license, to include Sunday sales, and a tasting permit, is denied.

IT IS SO ORDERED.



The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

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<sup>33</sup> The Commissioner is appointed by the Governor and confirmed by a majority of the members elected to the Senate. 4 Del. C. § 301(b); *see also* 4 Del. C. § 304(a)(4). The Commissioner's Rules and Regulations have force and effect of law. 4 Del. C. § 304(a)(1).

<sup>34</sup> 4 Del. C. § 304(a)(4).

### Right of Appeal

4 Del. C. § 304(b):

(b) The Commissioner's decision shall be final and conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, a party to such hearing files an appeal in the office of the Commissioner. Upon receipt of the appeal, the Commissioner shall cause the Chairperson of the Appeals Commission to be advised of the pending appeal and the Chairperson shall cause the Commission to be convened with at least 20 days notice to all parties. The appeal shall be heard by the Appeals Commission, who shall, in accordance with the Administrative Procedures Act, Title 29 of the Delaware Code, review the matter on the record and affirm, reverse or modify the decision of the Commissioner.