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by Thomas Jannarone, Esq.

WELLHOFER/WILINSKI SCHOLARSHIPS ANNOUNCED

Starting in 1945, the Wellhofer/Wilinski Scholarship Foundation has been awarding scholarships to deserving college bound students. The scholarship committee is proud to announce that the 2006 scholarship recipients are Christina Rotsides of Jackson whose father owns the Garden State Diner in Wrightstown and Michele Russo of Hamilton Square whose parents own the Ivy Tavern in Hamilton.

Nick Balka, Chairman of the scholarship committee noted "that the academic achievements of this year's applicants were outstanding, making the awarding of the scholarships a difficult task".

Christina Rotsides attended Jackson Memorial High School where she maintained a 5.0 average and graduated in the upper 1% of her class. She has excelled in advanced placement courses in Calculus, Chemistry, Physics, Spanish and Biology. She will be attending New York University and will be double majoring in Biochemistry and Spanish and Linguistics.

She was involved in many school activities serving as President of the Science National Honor Society and was a member of the Spanish Honor Society, the Key Club and the National Honor Society. As a member of the highly competitive Science League, Christina has helped the group win competitions and amass awards and honors up to the state level. Christina has been a contributor and on the staff of the Jackson Views, the school's literary magazine. In addition to her many school activities; she is an active participant in her church and finds time to work at her father's business.

Michele Russo attended Villa Victoria

Academy in Ewing where she maintained a straight "A" average in the most challenging honor and advanced placement curriculum that the Academy offers. She was nominated by the school faculty to be a member of the All Star Academic Science Team. She has earned academic honors during her high school career and was listed in Who's Who Among American High School Scholars.

Her high school activities include playing on the varsity softball and varsity soccer teams where she served as soccer team captain. She was a member of the Community Service Club, Public Relations Club, RTF Hand, the Student Council, the National Honor Society and the Spanish Honor Society. She has done volunteer work at Robert Wood Johnson Hospital, Trenton area soup kitchen and the Martin House Learning Center.

Several of Michele's poems have been published including "Hopelessly Devoted" which was published in the school literary magazine. Michele plans on attending George Mason University in Fairfax Virginia in the fall.

The Wellhofer/Wilinski Scholarship Foundation award is in the sum of \$10,000.00, payable at the rate of \$2,500.00 per year. To be eligible, one must be a matriculated, full-time, undergraduate student attending any recognized degree granting college or university and be a child or grandchild of a dues paying member of the NJLBA who paid dues one full year prior to application or the child or grandchild of a retired NJLBA member who paid dues continuously for the last five years prior to retirement. Applications, which must be filed by April 30th, can be obtained by calling the office.

RESERVE NOW FOR THE CONVENTION

The Tropicana Casino and Resort in Atlantic City is providing a special room rate of \$90.00 per night, plus fees and tax, single or double occupancy, for the 74th annual Alcoholic Beverage Retailers' Convention scheduled for October 9-11, 2006. Call Tropicana today, 1-800-The-Trop, to make your room reservations. Use code HABRC to get the special room rate.

The New Jersey Liquor Stores Alliance, the Empire State Restaurant & Tavern Association, the Pennsylvania Tavern Association, the Atlantic City Restaurant & Tavern Association and representatives from Maryland State Licensed Beverage Association will be attending the Convention. One of the benefits of a multi state conclave is the ability to exchange ideas with fellow licensees from different venues. Find out what works in other states.

Included in your registration fee is admission to the Nightclub and Bar Trade Show, a \$60 value. The Show has everything needed to take your restaurant, bar, nightclub, hotel or bowling alley to the next level. Keep your business on the cutting edge with the latest innovations in the beverage and food industry.

The program for the Convention is still in the process of being completed. Director Fischer and the ABC Staff will be presenting their always informative seminar on Wednesday, October 11th. If you have any questions or need clarification on ABC law or regulations, you must attend this seminar.

Add food, entertainment and hospitality bars and you have the perfect reason to be at the Tropicana October 9-11.

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Thomas Jannarone, Esquire

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TENTATIVE CONVENTION SCHEDULE

Monday, October 9, 2006

2 PM – 6 PM Registration Desk Open
3 PM – 6 PM Event, Seminar or Tasting
7 PM – 9 PM Welcome Cocktail Party & Reception
9 PM Entertainment

Tuesday, October 10, 2006 Continued

Noon Luncheon
Noon – 5 PM Nightclub & Bar Trade Show
7 PM – 10 PM Cocktail Reception & Dinner
10 PM - ??? Commotion at Cuba Libra

Tuesday, October 10, 2006

8 AM – 10 AM Continental Breakfast Sponsored by
Insurance Management Group
10 AM – 5 PM Registration Desk Open
10 AM – 2 PM Mandatory Training for New
Distribution Licensee
10 AM – Noon NJLSA Membership Meeting
10 AM – 11 AM Seminar
11 AM – Noon Seminar

Wednesday, October 11, 2006

8 AM – 10 AM Continental Breakfast
10 AM – 5 PM Registration Desk Open
10 AM – Noon Association Meetings
11 AM -12:30 PM ABC Seminar
12:30 PM–2:30 PM Luncheon
Noon – 4 PM Nightclub & Bar Trade Show
2:30 PM–4 PM Seminars
6 PM – 9 PM Cocktail Reception & Dinner
9 PM - ??? Entertainment

REGISTRATION FORM

Member

____ Full Registration @ \$225
____ Single Day(s) Registration @ \$110

Non-Member

____ Full Registration @ \$250
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Please *circle* which day or days you will be attending: Monday Tuesday Wednesday

Please *circle* which affiliate you are with: NJLBA NJLSA Empire MSLBA PTA

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*****ALL REGISTRATIONS INCLUDE ADMISSION TO THE NIGHTCLUB & BAR TRADE SHOW*****

Behind the Bar

by David T. Kratt

AND THAT'S WHEN YOU SAID, "BUT HE DIDN'T LOOK DRUNK TO ME!"



Walk the straight line, finger to the nose with eyes closed standing on one foot and the breathalyzer are a few roadside tests administered by the police in order to make their decision.

We don't need any tests.

In the few moments it takes to ask, "How are you tonight?" and "What can I get you?" we can pretty much detect any and all intoxicated persons every time, no matter how busy we are.

Okay, I'm being a little sarcastic, if you haven't noticed.

But, we do have to make that all-important decision whether to serve someone, literally, in the time it takes to greet and ask customers what they want to drink. Responsibility, legal liability and negligence may vary from state to state but, no matter where you're from, the fact is, it's awfully easy to question our judgment and point a finger at us to blame. Are we becoming our brothers' (and sisters') keeper? Maybe we are. If anything, that road we're traveling on does seem to be getting narrower with time. The signs are there. So we must not only maintain but improve on the responsible and professional manner in which we dispense alcohol, a mind-altering drug:

Should've, could've, didn't –

Cut off a good-tipper? Cut off a regular customer? Cut off the party girl who put a little fun in your otherwise boring night? Sometimes, we must make the tough call.

But you didn't.

You then hear through the grapevine that one of your customers got into a car accident and was arrested for driving under the influence after leaving your bar. Forget about any legal liability for a second! How would you like that on your conscience, or maybe even lose your job over it?

Now add a wild card –

Now he appears visibly intoxicated, but you only served him a drink or two the entire night; so did the other bartender and every other server. A guy was coming up to the bar for their drinks, but you never personally served her. He is one of many customers streaming into your bar this busy night. You quickly point at him and say, "What can I get you?" Then, during a little break in the action, you notice that he appears visibly intoxicated, and was probably cut off at another bar. He then disappears into the crowd.

Legally but not visibly intoxicated –

The opposing lawyer said, "There's no dispute that alcohol was a factor in the accident. He had a blood alcohol content of .08. He was legally intoxicated! And you just kept on serving him?"

And that's when you said, "But he didn't look drunk to me!"

As you know, a customer may not appear visibly intoxicated but is, in fact, legally intoxicated. Someday we may use some sort of a breathalyzer gadget before serving someone. But that's then. What can we do now?

AND THAT'S WHEN YOU SAID, "BUT HE DIDN'T LOOK DRUNK TO ME!"

Most people are responsible drinkers.

So of all the responsible drinkers you give the "green" light to, isn't it possible, even probable, that a few visibly intoxicated persons will slip through your bar's roadblocks?

Learning what to look for –

Try to make eye contact. Eyes don't lie. He's looking at you, sort of, but nothing seems to be going on behind those eyes. Is she leaning against the bar with just a tad too much dependency? Did he take an unusually long time to pull his I.D. out of his wallet? Experienced servers will tell you to focus on their eyes, balance and dexterity.

Can't make the call yet? Then you have to serve them.

Experienced servers will also tell you that when there's any doubt you must follow up. If it's slow, talk to that customer. If it's busy, drag your feet making the drink and observe. These customers don't ask, "Can you make it a stiff one?" They'll tell you. You also usually have to remind them a few times to pay for their drink. Spills happen, but this time it happened with a customer you're watching. He wants to shake your hand, a lot. He tells you, "Just do it," when you told him they didn't want another drink. Watch her get off her barstool and walk to the restroom.

Are you ready to make the call now?

You should be because that customer wants another drink.

It comes from the top –

Is it obvious to your staff that you're putting an effort into this area of business as you do with, say, trying to keep costs down and sales up?

Document your bar's procedures and ask your staff to document occurrences in a journal or on the daily report. Enroll your staff in classes. Post signs. Solicit experienced staff to help train inexperienced servers.

Drill it in that a customer immediately goes from a "green" light to a "yellow" light when there is any doubt; even if it is the moment they sit down. Then, everyone is informed and helps keep an eye on that customer. If a customer is given a "red" light, your staff knows how to professionally deliver the message. For example, it's not, "I have to cut you off," it's something like, "Sorry. We can't serve you anymore." Your staff knows whether to pull a customer's drink, knows when to ask a customer to leave and, if a customer is allowed to stay, knows that a "red" light is for the night – no turning "green" after drinking coffee or a pop.

Yes, that customer was served one drink before getting a "red" light, but it wasn't because your staff didn't do their job and it definitely wasn't due to negligence. In fact, even someone not in our business could see that your bar's procedures were up and running.

And that just might be the case.

Please send correspondence to dtkratt@chartermi.net or P.O. Box 638, Grand Haven, Michigan 49417.

Legislative Affairs Report

NEW JERSEY LICENSED BEVERAGE ASSOCIATION
TRENTON, NEW JERSEY
by Barbara McConnell

Both “ Hell and High Waters” pervaded the State House, and the State of New Jersey during recent weeks, when the third flood in over two years swelled the Delaware River, causing people to be evacuated from their homes; as well as state government. And, caused the Legislature to cancel scheduled important budget meetings.

While the rain was pouring down, Governor Corzine and Speaker of the Assembly, Joe Roberts, were in a standoff on the state budget, specifically over whether there would be a 1 percent increase in the sales tax. Roberts and many of the Assembly Democrats did not want to vote for a sales tax increase, but instead was calling for an increase in numerous other fees, surcharges and taxes. By July 1, the Constitutional deadline for having a budget in place, there had still been no agreement. As a result the Governor used his constitutional powers to shut down non-essential services in government, including the casinos, racetracks, courts and the lottery, and state government services.

This, of course, caused pressure to build and tempers to flare. By July 6, supporters of Assembly Speaker Roberts were faltering and calling on the Speaker to “make a deal”. The Governor by that time had presented another budget proposal, calling for the sales tax increase to dedicate 50% of the revenues raised for property tax relief; and a 100% in the years to follow. The Speaker finally conceded, but still wanted other cuts and other tax increases to make up the shortfall. Here what was finally agreed to and was signed on July 7, 2006:

- Increase in the sales and use tax from 6% to 7%, effective July 15, 2006;
- Increase in the cigarette tax rate of 17.% per pack and changes tobacco products wholesale sales tax on moist snuff to weight-based tax, effective July 15, 2006;
- Imposes a 4% surcharge on corporation business tax liability;
- Increase of minimum tax paid by corporations from \$500 to \$1,000;
- Imposes a 1% fee, or 1% tax on certain purchasers of certain type 4A commercial property for over \$1 million;
- Expands base of sales and use tax to: investigation and security firms; ringtones, movies, books; and fur clothing.

Some good news identified in the budget bill, at least for business:

- Full restoration of the Net Operating Losses;
- Elimination of the Alternative Minimum Assessment Tax
- No diversion of funds from the Unemployment Insurance Trust Fund; and
- **No increase in the Alcohol Beverage Tax**

The Legislature Adjourns until Further Notice

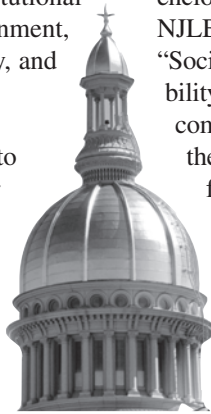
After a gut-wrenching month of June and first week of July, the Legislature has now adjourned until further notice. However, the Governor and Speaker have announced that special committees will be meeting over the summer months to study “property tax reform” and to discuss a possible Constitutional Convention on this subject. Other committees will likely meet over the summer.

Issues of Interest to NJLBA

- **No-Smoking Ban** - NJLBA submitted comments to the proposed regulations published on Monday, May 15, 2006. NJLBA’s comments focused primarily on the obvious attempt by the Department to place restrictions on “outdoor” smoking, specifically under the definition of “not structurally enclosed”; and Subchapter 9, “Procedures for Enforcement”. NJLBA also challenged the Department’s comments under “Social, Economic, Jobs Impact” and the “Regulatory Flexibility Act”. Comments were due on July 14, 2006. These comments, as well as others received will be published in the Record, together with the Department’s response, before the final adoption.
- **Video Lottery** - Video Lottery may not be dead after all - at least for the racetracks. On June 30, Senators Paul Sarlo and Joseph Coniglio called for approval of video lottery terminals in the Meadowlands as a funding source of \$300 million for the State budget. Senate Bill 266 has been lingering in the Senate Committee on Wagering, Tourism and Historic Preservations whose chair, Senator Barbara Buono is a co-prime sponsor. Senator Buono said she “supports holding a hearing on the legislation as soon as possible.” After the press conference, we spoke to Senators Sarlo and Coniglio, and Senator Buono about our support and interest in having video terminals in licensed beverage establishments, arguing that the state could triple that amount of revenue if these terminals were placed in these locations. All three Senators were interested in having a copy of our research on this issue and would consider incorporating our industry into the mix. However, the casinos continue to be an obstacle, but a recent report provided some chilling news to the casinos.

According to a study commissioned by the Codey Administration, the report concludes that the pending slot-machine boom in southern New York and eastern Pennsylvania - 47,000 machines may be added within four years to compete with Atlantic City’s 43,000 machines - is the real threat to South Jersey’s gambling economy. It will be interesting to see if the Corzine Administration and Senators Sarlo, Buono and Coniglio will have any better luck overcoming the strong opposition of Atlantic City.

continued on page 9



Reminder from the Division of Alcohol Beverage Control Regarding "Open Bars"

The Division of Alcoholic Beverage Control has received a number of recent complaints about retail licensees conducting "Open Bar" or "All You Can Drink" promotions in violation of N.J.A.C. 13:2-23.16. Retailers are reminded that unless the event is one of the limited exceptions listed below, such promotions will result in disciplinary action by the Division. The exceptions to the general prohibition are:

- A non-profit group that has obtained a social affairs permit to conduct a fundraiser or other event can include the availability of beer, a bottle of wine or distilled spirits without the requirement of a separate purchase for each drink.
- A retail licensee may conduct a New Year's Eve Party that includes a meal, entertainment and an open bar.
- An establishment may offer a package for private parties that would include an open bar or cocktail hour. Such events would include weddings, anniversaries, birthdays, etc. where the expense for the entire party is the sole responsibility of the host, or for a closed banquet for a group where tickets have been purchased by those attending.

Licensees found to be in violation of the prohibited promotions regulation can face a 10 day suspension for the first violation and a 20 or 30 day suspension for a second and third offense, respec-

tively. If other violations are present, such as serving an intoxicated or underage patron, the operation of a prohibited promotion will be considered an aggravating factor in the calculation of an appropriate penalty.

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ban has curtailed customers and that new taxes would put people out of business.

Legislators listened. The proposed excise tax on beer, wine and spirits was removed from consideration. Hundreds of letters and petitions were presented explaining the unfairness of the tax.

The tax on water was likewise defeated.

Effective July 15, 2006, the sales tax was increased to 7%. This tax was always intended to be a "pass through" tax payable by the consumer and collected by the retailer at the time of purchase. The Division of Taxation ruled that the tax could be included in the price. If a bottle of beer was \$3.00, twenty one cents is tax. With a sixteen per cent rise in the sales tax, retailers should re-visit including the tax in the price.

On the Federal level, the \$250.00 SOT tax paid annually has been permanently suspended. However, all alcoholic beverage retailers are required to file the registration form they received in the mail even though no payment is due

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LEGAL CORNER

by Thomas Jannarone, Esquire

Avoiding an underage sale violation

There are three important things to establish to successfully defend a charge of serving someone under the legal drinking age.

First, you must prove that the purchaser falsely represented his or her age by producing a photo driver's license of any state or an official photo identification card issued by any state or the federal government.

Second, you must prove that the purchaser appeared to be 21 years of age or older.

Third, you must prove that the seller relied on the false photo identification presented, and on the purchaser's appearance, thereby believing that the purchaser was 21 years of age or older.

Any forms of identification other than those listed above will not be recognized in a defense. Due to space restrictions, I will not discuss the written waivers here.

To help avoid an underage sale, establish a formal written identification checking policy crafted around the three things necessary to mount a successful defense. That policy should mandate that everyone who looks under the age of 40 must present identification. It should also outline the types of identification and backup necessary to complete a sale.

I suggest only accepting valid (non-duplicate) photo New Jersey licenses and United States passports as "primary identification". If a purchaser presents a duplicate NJ drivers license or a drivers license from another state, you should request photo backup identification. The more backup identification you look at, the better off you are. Documenting situations, and identification presented, (in writing) when primary identification is not presented is also a good policy.

A bartender or sales clerk who violates this law will be subject to a disorderly persons charge under N.J.S.A. 33:1-77. The license itself will be subject to administrative charges under that statute or N.J.A.C. 13:2-23.1 where the license can be suspended for many days. A license, which has four such violations within two years, will be presumptively revoked.

Thomas Jannarone, Esquire

Law Offices of Kalas & Jannarone
254 Brick Blvd., Suite 9
Brick, N.J. 08723

Associate Member, New Jersey License Beverage Association
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VISIT THE NEW NJLBA WEB SITE

With the help of legislation agent, Barbara McConnell and her associate, Kathy Shiarappa, the NJLBA.org web site was created. Please click onto the site and let the office know what features you would like added and what links you feel should become part of the web site. Please let us have your comments and suggestions so that we can continually up-grade the web site to meet your needs.

The National Association, the American Beverage Licensees, maintains a web site at ABLUSA.org which among other topics contains information about federal legislation issues and Association activities.

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FREQUENTLY ASKED QUESTIONS FOR BUSINESSES USING COPYRIGHTED MUSIC

While songwriting may not be the world's oldest profession, it could well be the most misunderstood. Many business owners who play music in their establishments are introduced to the songwriting profession when they receive their first letter or phone call from one of America's performing rights organizations, such as BMI (Broadcast Music, Inc).

Most people never give a thought to how songwriters earn a living until they operate a business that plays music in public. Sooner or later, these business owners are compelled to search out facts about copyright law. The Better Business Bureau distributes a helpful brochure titled "Music In The Marketplace," which can be found on the internet at www.bbb.org/alerts/article.asp?ID=451.

Representing more than 300,000 songwriters and copyright owners, BMI is the primary source of income for composers who supply half the songs and musical works performed in America.

BMI employees occasionally are asked the following questions by business owners:

Q #1 "If I bought my CDs in a retail store, can I play them anywhere I want?"

A Buying a CD doesn't convey the legal right to play it in a business or public place. You must get permission from songwriters or their performing rights organization to play music in a business.

Q #2 "If I have a contract with XM Satellite and/or Sirius Radio, do I still need a music license?"

A Both Sirius and XM are licensed by BMI. As long as XM and Sirius are used for background music ONLY, and your contract with the music provider is a commercial account, then your music use may be covered. A business owner must purchase a BMI license when a satellite radio unit under a consumer account is played in a business. Also, if your establishment charges admission, has dancing, and/or plays additional music such as CDs, DJs, live music, karaoke, etc, then your establishment must purchase a BMI license.

Q #3 "If I play music from a customer's iPod and/or a MP3 Player in my business, do I need a music license?"

A Music played from iPods and/or MP3 Players is another form of recorded music. The proprietor is responsible for obtaining a BMI license when such recorded music is played by customers or employees.

Q #4 "Aren't songwriters already earning big bucks with concert tours and T-shirt sales? Why do they need my hard-earned money?"

A Most songwriters are unknown to the public. They don't tour or sell concessions. The average songwriter doesn't earn a living wage from songwriting royalties. Many songwriters earn most of their income from the public performance of their music.

Q #5 "If I run a small business am I exempt from paying music licensing fees?"

A Regardless of size, businesses that use recorded or live copyrighted music nearly always need a music license to

comply with the law. Some small businesses that play only radio or TV may be exempt for that use. An exemption also may apply to record stores and audio/visual equipment stores where music is played in a designated area of the store in order to promote and/or sell the product (ie: listening station).

Q #6 "If I occasionally book local bands or musicians and I don't pay the performers, who work for tips, do I have to pay for a music license?"

A It doesn't matter whether a business pays the performers or not; the venue where the performance takes place is responsible for a music license.

Q #7 "If I hire bands playing only original music do I need a music license?"

A Most business owners have neither the time nor desire to research ownership of all songs prior to a performance. Federal Courts have ruled that a business owner is responsible for all music performed in the establishment, regardless of instructions that may be given to performers about what they should play. Experience proves that many so-called "original" music performances include BMI songs.

Q #8 "Customers don't come to my business for the music; they come to buy food (or drinks, clothes, or whatever). Why should I have to pay for a music license?"

A Numerous studies have found that the right music can improve a dining or shopping experience for customers. Songwriters add ambiance to your business, and are entitled by law to compensation.

Q #9 "If I already pay one performing rights organization for the music I use, do I need permission from anybody else?"

A Songwriters choose one of three performing rights organizations to represent them. That organization can license only the music of its affiliated songwriters.

Q #10 "I have heard that the companies that collect for music licensing don't pay the songwriters, so why should I pay them?"

A Founded in 1939, BMI operates as a non-profit making company. After deducting administrative fees, BMI pays out 86% of revenue collected to affiliated songwriters and copyright owners.

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- **Rest and Meal Breaks** - S-1021 - Sweeney, legislation which requires employers to provide rest and meal breaks to any one who works more than six hours continuously, and at least a 15 minute break to anyone who works more than four hours continuously - was scheduled for a Senate vote on June 26; however, the bill was held for lack of "yea" votes. It appears that this legislation has reached the "end of its road" for this session.
- Legislation on **Employer Mandated Health Care**, will not be considered by the Assembly according to sources in the Assembly Leadership.
- **Property Tax Reform** - Governor Corzine and Assembly Speaker Roberts have pledged to work "all summer" to bring about some recommendations on property tax reform, including a possible "Constitutional Convention".



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