



NLLEAGRAM

National Liquor Law Enforcement Association

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Summer 2006

Message from the President

Inside This Issue

- 1 Message from the President
- 2 News from NHTSA
- 3 News From the Hill
- 3 What's New
- 5 Congrats!
- 6 News from Around the Nation and Globe
- 9 The Law Corner

NLLEA Officers

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Sergeant - at -
Arms

Dear National Liquor Law Enforcement Association Members,

I hope this letter finds you well and enjoying the summer, although some places in the country are experiencing some extreme weather conditions! The Board had the opportunity to experience firsthand the rain and floods in Maryland the last week of June during our board meeting.

I want to personally apologize to our members for the difficulties many of you experienced acquiring a hotel room for the conference in Baltimore. The planners underestimated the number of rooms needed and have been working to acquire more hotel rooms in the area to accommodate the huge demand. The joint conference with OJJDP anticipates over one thousand registrations, including those of the NLLEA members. Hopefully most of you have your room reservations already made by now.

If you are planning on attending the conference, please be sure to bring items for our raffles. We always enjoy having many items from the different states, so be sure to pack something from your state. You can also go online for the National Leadership Conference to pre-register for some optional activities available during the conference. I strongly suggest that you pre-register for activities in order to ensure a place for you.

It is still not too late to throw your hat in for Sergeant-At-Arms position. Please make sure you let one of the officers know of your interest before the Annual Business Meeting on Friday, August 25. We are also looking for a state to

volunteer to host the conference next year so please ask your agency. We would really like to get back to hosting our own conferences, but we need volunteers from our membership to make that happen. Please give this some serious thought, especially if you are frustrated with the hotel situation this year!

The NLLEA Training Academy was once again a success. We had a relatively small group of 33 students, but I have only heard great things about the experience and training. I want especially to thank the Utah Department of Public Safety's Alcohol Enforcement Team members, Tony Garcia, Tricia Wilson, Sherri Green, Andy Campbell and Travis Trotta for their help in making this conference a wonderful experience for the participants. I also want to thank Chuck Conkling for his hard work organizing the conference and Charles Sumner for stepping in at the last minute to be the onsite leader. (By the way, Chuck Conkling recently became the proud grandfather of triplets!). The NLLEA is very fortunate to have these two wonderful members who put their heart into hosting a quality Academy. Lastly, I would like to thank all the instructors who took time off work to come and teach at the Academy. Your dedication is greatly appreciated by the members and the Board.

The Board met on June 27 to work on details for our Annual Business Meeting and other conference-related details. We will bring forward to the membership a Bylaws change to our membership fee structure. We have worked out a proposal that breaks down fees by the number

of members the agency would like to join NLLEA. We also are planning on working with a facilitator to work on a strategic plan to become a self-sustaining organization by the summer of 2007. We are excited about moving forward and becoming the kind of association that our membership expects.

Shawn Walker and I had the opportunity to meet with MADD National's Director of Programs, Cathey Wise, National Law Enforcement Initiative Coordinator, Carl McDonald, and Youth Programs Coordinator, Dora Hunter. They contacted us to request a meeting with the Board to talk about some of their national programs. It was a wonderful opportunity to start the dialogue

between two national organizations and look at possible opportunities to assist each other. It was a very productive meeting. I look forward to continuing the dialogue with them in the future.

Hoping to see you in August,



Linda Ignowski
2005-2006 President



News from NHTSA

In case you were not aware, three publications concerning alcohol law enforcement are now available online on the NHTSA website. These documents were produced through NHTSA funding to PIRE to work in collaboration with the National Liquor Law Enforcement Association for the purposes of conducting research on law enforcement areas (beyond checkpoints and DWI patrols) that could further reduce the incidence of impaired driving.

Preventing Over-consumption of Alcohol – Sales to the Intoxicated and “Happy Hour” (Drink Special) Laws analyzes state laws and reviews the status of enforcement and adjudication as of February 2005. It is available at <http://www.nhtsa.dot.gov/people/injury/alcohol/PIREWeb/images/2240PIERFINAL.pdf>.

The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws is based on legal research and interviews with officials at state alcohol beverage control agencies. It is available at <http://www.nhtsa.dot.gov/people/injury/enforce/ABCRoleWeb/images/ABCFinal.pdf>.

Alcohol Beverage Control Enforcement: Legal Research Report analyzes variations in state approaches to enforcement and education of 12 key legal policies for addressing underage drinking and drinking to intoxication as of April 2003. It is available at <http://www.nhtsa.dot.gov/people/injury/alcohol/AlcBevContWeb/images/2241LegalrFINAL.pdf>

In June NHTSA invited NLLEA to participate in a working group meeting on underage drinking enforcement programs in which the agency may engage. Other participants at the meeting included the Substance Abuse and Mental Health Services Administration, the Department of Education, representatives from state Governor's Highway Transportation Safety Offices, Enforcing Underage Drinking Laws Program State Coordinators, the National Center for Alcohol Law Enforcement, and the Underage Drinking Enforcement Training Center. The meeting was held in the District of Columbia and was the second meeting on this subject. NLLEA Vice President Shawn Walker attended representing the Association. Discussions centered on the implementation of a limited pilot program to assess the viability of implementing and sustaining a broader campaign.



News From the Hill

Some Victories - But More Work Must Be Done!

by Jim Copple



The appropriations process continues to move at a snail's pace. The good news for liquor law enforcement is that the Enforcing Underage Drinking Laws initiative is in as a hard earmark for \$25 million in the House subcommittee on

Science, the Departments of State, Justice, and Commerce and Related Agencies. It cleared the House with that number. That means that as the Bill makes its way toward the Senate we have a good foundation for advancing or continuing this program.

The National Center for the Advancement of Law Enforcement (NCALE) is in the same Bill as a soft earmark. That means there is no fixed number and a figure will be negotiated when the Bill goes to Conference in the Senate. In an environment where numerous programs are being cut or reduced this is very good news. As appropriations moves through the Senate, we will need your voices to speak up in support of these initiatives and these programs. Please pay attention to any alerts posted on the IIAA Digest for updates or additional calls to action.

As a whole substance abuse programs and initiatives are not faring too well. Treatment dollars are in jeopardy, the block grants supporting prevention are up for grabs and the demand reduction program for the Drug Enforcement Administration has been cut in half. The deficit hawks, the war, and other priorities are threatening the funding base that supports our efforts to prevent and reduce underage drinking.

It will be some time before the appropriations process is finished this year. Many believe that nothing will be resolved until after the November elections. The tough decisions will be put-off and delayed until there is some kind of political cover. We have been here before, and it looks like we will be there again. We are facing cuts, and we must be clear about our hopes and expectations.

As I am on the Hill, I am discovering again and again that we are failing to communicate our issues to members of Congress. We need to continue to educate them on the value and role of liquor law enforcement in our communities. If they do not hear from us - then they will hear from folks who stand to benefit or profit from our silence. We encourage you to invite your congressional delegation and their staff to participate in ride-a-longs or attend specialized meetings or trainings aimed at dealing with problem drinking and/or underage drinking. As you know these can be eye-opening experiences. Please be intentional about these efforts - it can make all the difference in the world.

What's New

Membership Gears Up for 20th Annual Conference

Baltimore in August is the place to be for the 20th Annual NLLEA Conference. Titled *Two Decades of Progress and Innovation in Liquor Law Enforcement*, this conference will provide liquor law enforcement officers from around the country will an opportunity to celebrate the accomplishments of the past 20 years and consider how growing national attention to the importance of alcohol enforcement can be parlayed into greater support for our field.

This year's conference will be held in conjunction with the Underage Drinking Enforcement Training Center's National Leadership Conference (NLC) from August 23



Baltimore Inner Harbor

to 26. This partnership will allow NLLEA members to interact with close to 1,200 professionals and advocates working on underage drinking issues. The partnership will also enable the Association to achieve its goals of improving the standards and practices of liquor law enforcement, facilitating the professional development of members, and publicly recognizing the role and achievements of liquor law enforcement in protecting and promoting public safety.

Conference highlights will include:

- A plenary session featuring a project involving the Washington State Liquor Control Board that sought to reduce incidence of DWI by targeting problem retail establishments
- A plenary session on model social host liability ordinances that will include legal, economic, enforcement, and policy perspectives
- A workshop on performance-based management for liquor law enforcement agencies
- A workshop on how to continue to conduct effective liquor law enforcement in a period of resource reduction
- A workshop on how to organize and implement a liquor enforcement taskforce
- Liquor law enforcement awards
- Election of new officers.

The conference will be held at the Marriott Baltimore Waterfront Hotel and begin with the President's Reception on the evening of Wednesday, August 23rd. The Association Banquet and Closing Ceremonies will conclude the conference on Saturday evening, August 26th. Optional activities include attending Baltimore Orioles games and a evening bus tour of the Nation's Capital. To find out more about the conference, visit the NLLEA website (www.nllea.org) and click on Conferences or contact NLLEA at (301) 755-2795 or via email (support@nllea.org). This will be a gathering you will not want to miss!



Conference location

Won't You Consider?

As the NLLEA Board moves through its annual cycle, the membership will vote in a new Sergeant-At-Arms in August while other members of the Board take new responsibilities. As of press time, no members have indicated an interest in running for the Sergeant-At-Arms position, resulting in the *NLLEAgram* being unable to circulate statements from candidates in advance of the Annual Meeting.

The future of the NLLEA rests entirely on the willingness of members to volunteer their time and their expertise. The NLLEA's Sergeant-At-Arms participates in quarterly NLLEA Board meetings, reviews workshop abstracts submitted for the Annual Conference, reviews nominations for the NLLEA Law Enforcement Awards, and oversees PIRE staff charged with producing and disseminating the *NLLEAgram*. While this may seem like a lot of work, it is not unmanageable. If you think you might like to serve in this position, but still have questions, contact any current officer. They all have served in this role.



Please consider whether you can contribute your time and talents to the NLLEA. The Association would value your involvement and leadership.

2006 Training Academy Wrap Up

by *Chuck Conkling*

Thirty three students from fourteen agencies graduated from the 2006 NLLEA Training Academy on May 26th. Although the turnout was less than expected, the Academy was very successful. Much of the credit goes to Utah Department of Public Safety for its excellent support. Thanks to Tony Garcia, Tricia Wilson, and Sherri Green for all the hard work! All the folks from Utah were wonderful in their support before and during the Academy. They put forth much tireless effort to help make this Academy another success.

A special thanks to Charles Sumner for taking over in my absence and shouldering the responsibility of the day-to-day operations. As some of you know, my daughter was in Duke University Medical Center trying

not to have triplets too early, and I needed to be at home. It was an emotional struggle for me all week. It's the first Academy I have ever missed, but Charles stepped up and did an excellent job.

Of course, special thanks to all the instructors who stepped up as well and provided much needed support for Charles. It speaks well of our core instructors that truthfully anyone of them could run the Academy. Individually, and as a group, they are an outstanding team of dedicated professionals. The Association can be justifiably proud of the efforts put forth by these instructors. They serve you with tireless devotion because they truly care. I can truthfully say that I have never served with a more devoted, loyal, and supportive team of people on my entire career in law enforcement. Together with Charles, they functioned as a team and got the job done. Thanks to all of you.



2006 Training Academy Instructors and Participants

Congratulations!

California Department of Alcoholic Beverage Control (ABC) Director **Jerry R. Jolly** has announced his retirement after 31 years with the department effective August 31, 2006. He was appointed by Governor Arnold Schwarzenegger in 2004 and successfully guided the California ABC in its efforts to implement performance-based management principles and develop innovative law enforcement programs such as the Target Responsibility for Alcohol Connected Emergencies (TRACE) Program.

During his 31 years with the department, Jerry worked in a variety of positions in both northern and southern California and served as both Assistant Director and Chief Deputy Director. He also served as Project Manager for the department's Grant Assistance Program (GAP), Licensee Education on Alcohol and Drugs (LEAD) Program, and the Alcohol Issues Partnership with the California State University System. Enjoy your retirement, Jerry, but don't be a stranger!

News from Around the Nation and Globe

Powered Alcohol Drink Causes Concern

An online German publication recently published a story on the growing presence of powered alcoholic mixes at gas stations, convenience stores, liquor stores, and bars. Health advocates who oppose the product expect consumption of it to counter declines in the consumption of flavored alcoholic beverages (also known as alcopops) produced by a special tax on alcopops that went into effect in Europe last August.

The product, *Subyou*, is derived from vodka or rum and mixes with cold water. Manufactured by a German company and available for sale over the Internet, it appears to be marketed at youth with slogans advertising “taste for not much dough.” European health advocates are calling for a special tax on this new alcoholic product noting that youth are having little difficulty obtaining it from even traditional retail sources.

Word is spreading quickly in the U.S. with young bloggers asking how Subyou can be obtained.

Source: Deutsche Welle (<http://www.dw-world.de/dw/article/0,1564,1596657,00.html>).

New Jersey ABC Denies University "Pub Night" Permit

Just prior to the end of the school year, the New Jersey Division of Alcoholic Beverage Control (ABC) denied Princeton University the right to serve, sell or deliver alcoholic beverages with the “special events” permits it had obtained for May from Princeton Borough officials. The denial is a rare occurrence in a state where scrutiny of applications for special event/social event alcohol permits and approval is left primarily to local authorities. The state agency often grants final approval for such permits.

Problems arose when the university used the first of four permits to “test the waters” for opening a new permanent student pub on-campus. The other permits were to have been used for the same purpose. The



university reported that the “pub night” idea stemmed from a desire to curb irresponsible and underage drinking, and patrons included faculty, staff, graduate students and some students who were of legal drinking age.

Borough officials stated that the university gave no indication that the events were intended to serve as a prelude for things to come. University officials countered that the institution had no intention of circumventing standard procedure for obtaining the proper authorization for operating a pub.

Princeton closed its student pub in 1984 after the state increased the minimum legal drinking age to 21. Another bar opened in 1992 but closed a year later due to poor demand and financial losses. Thus, using the special event permit to “test the waters” may have seemed like a good idea, but it apparently was not a legally valid one. Under ABC regulations, social affairs permits are meant for civic, religious, educational or similar purposes. Test marketing falls outside of such purposes.

Source: *Trenton Times* April 19, 2006.

New Policy and Enforcement Drive Crime Down

July 2002 is an important month in the history of Diadema, a city of approximately 400,000 people located just south of Sao Paulo, Brazil. That was when the city instituted a new ordinance that prohibits alcohol sales after 11:00 p.m. Statistics on homicides, traffic crashes, assaults on women, and alcohol-related hospital admissions have all plummeted since that time, some by as much as 80 percent.

The idea for the law came about in response to the alarmingly high crime rates that occurred in Diadema between 9:00 p.m. and 6:00 a.m. The municipal government called upon military and federal police to beef up enforcement activity within the jurisdiction. These actions produced reductions in homicides and assaults against women in the first six months. While city officials were pleased, they believed that further reductions were possible.

After creating a crime map for the city, data showed that murders occurred most frequently in neighborhoods with high concentrations of bars. Further investigation indicated that crimes were not planned but were “crimes of passion” in response to unplanned confrontations. Armed with this information, the city adopted the earlier bar closing ordinance with 93 percent of residents expressing support (according to the results of one survey).

A task-force like enforcement unit comprised of staff of various city departments meets daily to conduct operations in a specific section of the city. The location, however, is not known until the unit is ready to be deployed for the evening's work. Violators are adjudicated administratively (rather than criminally) and penalties are progressive in nature. City officials say that enforcement and adjudication policies have provided retailers with the assurance that they are not at an economic disadvantage by obeying the law.

Source: *San Francisco Chronicle* May 10, 2006.

Virginia ABC Offers Grants Aimed at Colleges and Communities

The Virginia Department of Alcoholic Beverage Control (ABC) recently accepted applications from throughout the state that proposed multi-layered approaches to curbing underage and hazardous drinking. Operation Undergrad is a grant program designed to help colleges and universities develop and enhance partnerships among college and local law enforcement departments, regional offices of the ABC, community organizations, and college substance abuse coordinators. Virginia ABC will award grants, up to \$7,500 per grant, to college law enforcement and substance abuse offices for the 2006-2007 academic year.



The Community Coalition Grant is designed to support collaboration among local businesses, community organizations and state agencies working to promote zero tolerance for underage alcohol consumption through environmental, educational, and information dissemination strategies. Community Coalition grants may be for up to \$7,000.

Submission deadlines for both programs were in June, and some applicants have already been notified. The Wythe County Sheriff's Department received one of the 5 grants awarded under the Community Coalition grant program. It will use \$5,000 to conduct retail compliance checks and party patrol operations among other things. Located in a rural area of the state, the department also plans to work hand in hand with the ABC Board and its local agents with whom it enjoys an excellent working relationship according to Sheriff Doug King.

Funding for the grants was made possible through the Office of Juvenile Justice and Delinquency Prevention's Enforcing Underage Drinking Laws Program.

Source: Virginia ABC and *The Wytheville Enterprise* June 29, 2006.

Nebraska Liquor License Law Modified

One word can make all the difference in the world. Consider the word "may" which has replaced the word "shall" in language concerning the Nebraska Liquor Control Commission's granting of liquor licenses. Prior to the modification of state law in June, the commission was required to issue a liquor license if certain conditions were met by the applicant. Revision to the state law also requires the commission to consider whether new licenses would create an undue concentration of similar licenses in one area.



State Senator Ray Aguilar co-sponsored the legislation in the hope of generating more local control of alcohol outlet density. The State Attorney General supported the bill and provided Aguilar's office with research to bolster the facts supporting the proposed changes.

Aguilar now intends to introduce legislation that would require beverage server training.

Source: *The Independent* June 16, 2006.

Talking Urinals Join Fight to Curb DWI

The Traffic Safety Board of New York's Nassau County recently announced that it will install talking urinals in bar restrooms to help potential drunk drivers make the choice to travel more safely to their next destination. Developed by Richard Deutsch, a former chiropractor and engineer, the "Wizmark" is a battery-powered watertight device that looks like a hockey puck with mesh wings and is placed at the base of a urinal, similar to a deodorant cake.



The Wizmark is designed to be activated when the urinal is flushed and is projected to last through 10,000 flushes. Among the messages generated by the device is a rather assertive one that begins, "Hey you! Yeah you! Having a few drinks? Then listen up!" The message goes on to say that it may be better to call a friend or cab because it's safer and cheaper than getting charged with DWI.

In making the decision to install the Wizmarks in 100 restrooms in the county, the board examined data that indicates that the majority of alcohol-related accidents are caused by male drivers and considered that men often stop in a restroom



before leaving a bar. They also recognized that effective marketing approaches for young men often involve what some may consider outrageous approaches. Bar owners will not be required to install the devices, but they are encouraged to do so.

And so as not to be discriminatory, Wizmark is developing a similar device with scrolling text but no sound for use in women's restrooms, where it would be fastened to stall doors.

Source: *New York Times* May 17, 2006.

The NLLEA would like to thank the following contributors to this newsletter:

Maria Carmona
Chuck Conkling
Jim Copple
Joey Dacanay
Jessica Hurd
Linda Ignowski
Aidan Moore
Shawn Walker

We're looking for articles for the Fall 2006 issue of the *NLLEAgram*. If you would like to contribute an article, news about your agency and its programs, or career updates to the next issue, please submit to the following address by **October 3, 2006**:

NLLEA
11710 Beltsville Drive, Suite 125
Calverton, MD 20705
Phone: 301-755-2795
Fax: 301-755-2799
Email: support@nllea.org

?OP QUIZ

Quizmaster Asks, "What? No Takers?"

The last issue of the *NLLEA Newsgram* included a short pop quiz in honor of the 20th Annual NLLEA Conference. Although a few readers submitted answers, non-members of the Association are not eligible to participate. So, the Quizmaster wonders if the experts have been stumped. If you want to prove the Quizmaster wrong, try answering the following questions:

Where did the first national gathering of liquor law enforcement professionals take place?

Who won the World Series in 1987 (the year of the first national gathering of liquor law enforcement professionals), and how many games were played?

Three of the top ten grossing movies in 1987 featured law enforcement officers as leading characters. Can you name one or more of the three movies?

Who won the Iditerod in 1987?

Send your answers to the Quizmaster at support@nllea.org. Individuals submitting the most correct answers will have their names entered into a drawing to receive a special prize at the 20th Annual NLLEA Conference Banquet in August.

The Law Corner

"The safest way to double your money is to fold it over once and put it in your pocket"

by Aidan J. Moore, JD



In May 2005 the Colorado Court of Appeals rendered their opinion in the case of *Snizek v. Colorado Department of Revenue*. Plaintiffs, Nicki M. Snizek and F.A.C.E. Trading, Inc instituted an action seeking

injunctive relief, return of property and a declaration that the machine and associated Ad-Tabs were not illegal gambling devices.

The State of Colorado counterclaimed, seeking forfeiture of the machine, Ad-Tabs, and money. Denying Plaintiffs' request for an injunctive relief, the trial court found that the machine and Ad-Tabs were illegal gambling devices subject to seizure and disposal by Defendants.

The Facts of the Case

F.A.C.E. manufactures a machine that dispenses "Ad-Tabs" and sells these machines to owners of restaurants and bars. Ad-Tabs are paper tickets that contain a coupon on one side and a cash prize game on the other. A customer purchases an Ad-Tab from the machine for one dollar per tab.

The cash prize game contains a combination of symbols that are revealed when the purchaser opens the tabs. Various combinations of symbols result in differing levels of prizes, with the prizes ranging from one dollar to five hundred dollars. The purchaser of a "winning" Ad-Tab can redeem the ticket for a cash prize by presenting it to an employee of the establishment where it was purchased. A game piece can also be obtained from F.A.C.E. by requesting one via the mail.

The coupons on the reverse side of the Ad-Tab provide a discount for merchandise that can be obtained when the customer tenders the coupon and the purchase price to F.A.C.E. or another merchant. Occasionally, more than one coupon is required to purchase the merchandise.

The Plaintiff, Snizek, operated with a liquor license issued by the Colorado Department of Revenue and therefore was subject to its regulations. After she purchased and installed an Ad-Tab machine in her bar, the State determined that the machine and Ad-Tabs were illegal gambling devices. Accordingly, it seized the Ad-Tab machine, along with the Ad-Tabs and money that were in it at the time.

Analysis of the Case

The first issue appealed in this case was Plaintiffs' contention that the trial court erred, as a matter of law, in its determination that the Ad-Tabs and the machines that sell them constitute gambling devices under § 18-10-102(3).

Analyzing Colorado Liquor Code, § 12-47-901(5), C.R.S. 2004, the Court observed that a licensed retailer may not authorize or permit gambling or the use of any gambling machine or device on its premises. "Gambling," as pertinent here, means "risking any money ... or other thing of value for gain contingent in whole or part upon lot, chance, [or] the operation of a gambling device." Section 18-10-102(2), C.R.S. 2004. The Court said gambling requires the existence of the following three elements: (1) risking any money or thing of value; (2) for gain; (3) contingent in whole or in part upon lot, chance, or the happening of an event over which the person taking a risk has no control. See *Charnes v. Central City Opera House Ass'n*, 773 P.2d 546 (Colo. 1989).

Further quoting the law the Court noted a "gambling device" is "any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine." Section 18-10-102(3).

In their concurrence with the trial court, the Court of Appeals found the trial court made the following factual determinations: (1) the printing on the machine advertising the chance to win money is more prominent than the advertising for the opportunity to purchase merchandise with a coupon; (2) the layout of the coupons, their size and color, and the method for determining a winner are nearly identical to a Colorado scratch lottery ticket; (3) the products available for purchase through the coupons are not displayed anywhere on or near the machine such that it is impossible for a consumer to know in advance what type of product the coupon is for; (4) F.A.C.E. does not keep track of how much revenue is generated by the sale of merchandise and considers the cost of the merchandise to be an expense associated with doing business; and (5) in 2002, F.A.C.E. sold over 20 million Ad-Tabs, but only received 40 requests for free entries. Because these findings are supported by the evidence in the record, the Court of Appeals did not disturb them on review.

Applying the statutory provisions defining gambling devices to these facts, the Court found it undisputed that a customer can win up to \$500 with the purchase of one Ad-Tab and the machine dispenses them randomly, without any input from the purchaser.

Thus, both the “for gain” and “contingent upon chance” requirements are clearly met.

On the issue of whether a customer is risking his or her money by the purchase, the Court found the items to be purchased with the coupons are not displayed anywhere near or on the machine, nor does a customer know what the coupon is for before purchasing the Ad-Tab.

“Thus, the customer does not know what product the coupon will enable him or her to purchase, what the price for the product will be, or whether more Ad-Tabs must be purchased to qualify. Hence, the customer takes a risk upon the purchase of the Ad-Tab. In addition, the machine advertises the chance to win money, and the emphasis in the advertisement is the ‘win cash’ slogan, as opposed to the purchase of merchandise.”

The second issue on appeal was that the trial court erred by failing to admit evidence and render a declaratory judgment concerning the legality of proposed new, modified procedures, rules, and promotional materials. As a part of their case in chief, the Plaintiffs sought to introduce the testimonial evidence of an expert witness who had spent a number of years as an agent with the FBI, investigating gambling operations. The Plaintiffs proffered the witness would testify that “the sale of adtabs through the vending machine that was confiscated did not violate any Colorado gambling statute and was not illegal gambling.” The Court held trial court’s exclusion of the expert’s testimony was not an abuse of discretion because the testimony would have encompassed the ultimate legal determination that the trial court was capable of determining itself.

As part of their response to the State’s motion for summary judgment and their motion in limine, the Plaintiffs announced proposed changes to their procedures, rules, and promotional materials, and asked the court to determine whether such changes would be legal. The trial court declined to review these materials and reasoned that any decision with regard to these matters would be advisory only.

In support of the trial court’s reasoning the Court noted that actions for declaratory judgment are meant to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. Quoting earlier Colorado opinions, the Court observed that

“[a] court’s jurisdiction exists in such actions only if the case presents a currently justiciable

issue or an existing legal controversy, rather than the mere possibility of a future claim. *Bd. of County Comm’rs v. Park County Sportsmen’s Ranch, LLP*, 45 P.3d 693, 698 (Colo. 2002). For a court to issue a declaratory judgment, an actual legal controversy must be present and not a mere possibility of a future legal dispute over some issue. *Cacioppo v. Eagle County Sch. Dist. Re-50J*, 92 P.3d 453 (Colo. 2004).”

The Court agreed with the trial court finding on this issue. “A decision involving proposed procedures, rules, and materials that were not the subject of the seizure by Defendants would address the possibility of a future legal dispute, not a present controversy. Hence, the court did not abuse its discretion.”

Summary

Many states have alcohol beverage laws provisions similar to Colorado. This case is an outstanding example of case building, litigating issues, and developing good case law in support of the broader alcohol law enforcement mission. You are encouraged to consult with your legal advisor if you are developing a similar case for prosecution.



Did you notice the NLLEA window decal that was included with this issue of the *NLLEAgram*? Please be sure to display it on you car, truck, motorcycle, or whatever vehicle you possess. It is just one small way in which you can help communicate information about the existence of our Association and its value to public safety.