

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MB DORAL, LLC, d/b/a MARTINI
BAR,

Petitioner,

vs.

Case No. 18-6768RX

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF ALCOHOLIC BEVERAGES
AND TOBACCO,

Respondent.

_____ /

FINAL ORDER

On January 24, 2019, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division) conducted a duly-noticed hearing in Tallahassee, Florida.

APPEARANCES

For Petitioner: Michael Martinez, Esquire
Greenspoon Marder LLP
215 South Monroe Street, Suite 530
Tallahassee, Florida 32301

For Respondent: Daniel Johnathon McGinn, Esquire
Department of Business
and Professional Regulation
Suite C452
2601 Blair Stone Road
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STATEMENT OF THE ISSUES

Whether Florida Administrative Code Rule 61A-4.020 (the Off-Premises Storage Rule or OPS Rule) is an invalid exercise of delegated legislative authority in that it: (a) enlarges, modifies, or contravenes the law implemented; (b) is vague, fails to establish adequate standards for agency decisions, and vests unbridled discretion in the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Department or DABT); (c) is arbitrary and capricious; or (d) exceeds DABT's grant of rulemaking authority, in violation of section 120.52(8), Florida Statutes (2018).

PRELIMINARY STATEMENT

On December 21, 2018, Petitioner MB Doral, LLC, d/b/a Martini Bar (MB Doral), filed a Petition Challenging Validity of Existing Rule 61A-4.020 and Determination Regarding Unadopted Rule with the Division (Petition). The Petition seeks a determination that the OPS Rule is an invalid exercise of delegated legislative authority, in violation of section 120.52(8), Florida Statutes (2018), and a determination that the Department of Business and Professional Regulation's "ABT Form 6017 Application and Inspection Report for Off-Premises Storage Permit" (ABT Form 6017) is an unadopted rule. On December 27, 2018, Chief Judge Robert Cohen issued an Order of Assignment,

which assigned this matter to the undersigned administrative law judge (ALJ).

On January 23, 2019, DABT filed a Motion to Bifurcate and Stay Proceedings (Motion), related to the unadopted rule challenge. The Motion stated that on January 22, 2019, DABT provided a Notice of Rule Development and Notice of Proposed Rulemaking to the Office of Fiscal Accountability and Regulatory Reform (OFARR) and the Joint Administrative Procedures Committee (JAPC) concerning a proposed revision to rule 61A-4.020 that would, inter alia, promulgate ABT Form 6017. The undersigned heard arguments concerning the Motion at the final hearing on January 24, 2019, and orally granted the Motion. On January 25, 2019, the undersigned subsequently entered an Order Granting Respondent's Motion to Bifurcate and Stay Proceedings, which held: (a) pursuant to section 120.56(4)(b), MB Doral's unadopted rule challenge shall be stayed pending the proposed rulemaking that, inter alia, proposes to promulgate ABT Form 6017; (b) the matter shall be bifurcated, so that the parties can proceed on MB Doral's existing rule challenge; and (c) DABT shall provide the undersigned with a status report within 30 days concerning the status of the proposed rulemaking.

The undersigned conducted a final hearing on the existing rule challenge to rule 61A-4.020 on January 24, 2019. The undersigned admitted into evidence Joint Exhibit 1, the

deposition transcript of Damon J. Larry, assistant bureau chief of DABT's Bureau of Licensing. MB Doral presented the testimony of Louis J. Terminello.^{1/} The undersigned accepted Petitioner's Exhibits 1 through 4, without objection. Although DABT presented no witnesses or exhibits at the final hearing, it filed an Unopposed Motion to Supplement the Administrative Record on February 1, 2019, which requested the undersigned to admit into evidence correspondence between DABT and JAPC, dated January 29, 2019 (after the final hearing), concerning rule 61A-4.020. On February 4, 2019, the undersigned entered an Order Granting Respondent's Unopposed Motion to Supplement the Administrative Hearing Record and admitted the correspondence as Respondent's Exhibit 1.

The Transcript of the final hearing was filed with the Division on February 1, 2019. At the final hearing, the undersigned provided the parties with a deadline of February 4, 2019, to submit proposed final orders. Both parties timely filed proposed final orders, which the undersigned has considered in the preparation of this Final Order.

All references are to the 2018 codification of the Florida Statutes unless otherwise indicated.

FINDINGS OF FACT

1. DABT is the state agency charged with the licensing, regulation, and enforcement of Florida's alcoholic beverage and tobacco laws. See §§ 561.02 and 561.08, Fla. Stat.

2. DABT administers and enforces Florida's "Beverage Law," found in chapters 561 through 568, Florida Statutes, and administrative rules promulgated thereunder. See § 561.01(6), Fla. Stat.

3. DABT issues State of Florida Alcoholic Beverage Licenses pursuant to the Beverage Law, and ties certain licenses to the county in which the licensee conducts its business. See § 561.20, Fla. Stat. DABT presented evidence at the final hearing, through the deposition of Damon Larry, DABT's assistant bureau chief, that it does this for a variety of reasons, including revenue distribution purposes, and to distinguish what alcoholic beverages a licensee may lawfully sell or store in a particular county.

4. DABT classifies one of these types of licenses as "quota" licenses, which it issues on a per county basis. See § 561.20(1), Fla. Stat. The licensed premises of the business operating under the quota license must be located in the county for which DABT issued the license.

5. The leading two digits of the license number of a DABT-issued license identifies the county in which the business operating the license is located.

6. MB Doral is the holder of Florida Alcoholic Beverage License Number BEV2301022, Series 4COP Quota. DABT issued the license for use in Miami-Dade County.^{2/}

7. MB Doral operates an alcoholic beverage establishment in Miami-Dade County known as the Martini Bar.

8. MB Doral also caters alcoholic beverages at large open-air events throughout the State of Florida. Louis J. Terminello, a majority owner of MB Doral, testified that MB Doral has recently catered, for example, the Ultra Music Festival in Miami-Dade County, the Riptide Music Festival in Broward County, and the Electric Daisy Carnival in Orange County. Mr. Terminello testified that MB Doral may lawfully cater these events at locations outside of Miami-Dade County pursuant to an exemption found in section 561.20(2)(a)5., which permits quota licensees to sell alcoholic beverages at catered events outside of the county in which DABT issued the license.

THE OPS RULE

9. Rule 61A-4.020, which has been in existence since 1980, reads as follows:

61A-4.020 Storage Permits.

(1) Manufacturers, rectifiers, distributors, vendors and cooperatives or pool buying vendors who require additional storage outside of their licensed premises must obtain a permit therefor. Such permits can be obtained from the Division without fee, provided that the storage room is located in the same county as the parent place of business of the licensee or agent of such cooperatives or pool buying vendors to whom the permit was issued and provided that no such permits shall be issued to a structure which is or is a part of the residence or garage of a licensee or any employee of any licensee. Such permits authorize the storage of alcoholic beverages only in sealed containers. Applications for such permits shall be made on forms prescribed by the Division for that purpose and shall be submitted to the district supervisor of the district in which the licensed place of business for which the permit is sought is located.

(2) The district office will prepare, in quadruplicate, a permit showing the name of the licensee and the licensed premise(s) he owns and operates. The permits will be validated by the signature of the district supervisor and distributed as follows: Original, to be posted on door of storage room; Second Copy, posted with license; Third copy, sent with copy of application and inspection report to Central Office licensing; Fourth copy, filed in field office license file.

(3) Applications for off-premises storage permits may be accepted at any time; however, renewals will be issued on an annual basis concurrent with the beverage license year and shall automatically renew with the renewal of the beverage license. Should the ownership of the beverage license change, a new off-premises storage permit will be required,

otherwise, the permit shall remain in effect until cancelled by the licensee or division.

(4) In the event a licensee discontinues the use of storage permits, both copies shall be forwarded to the district office for cancellation.

(5) By acceptance of such storage permit, the licensee shall agree that the storage premise shall be subject to search by authorized employees of the Division, sheriffs, deputy sheriffs, and police officers during the hours such premise is occupied.

Specific Authority 516.11 FS. Law implemented 561.07, 562.03, 565.03(2) FS. History-Repromulgated 12-19-74. Amended 3-1-76, 1-28-80. Formerly 7A-4.20, 7A-4.020.

10. The OPS Rule identifies section 516.11 as the law implemented. DABT concedes that this is a typographical error, which it intends to correct in the current rulemaking concerning the OPS Rule. Section 561.11 provides DABT with the "authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Beverage Law."

11. Section 562.03, which the OPS Rule cites as a law implemented, provides as follows:

562.03 Storage on licensed premises.—It is unlawful for any vendor to store or keep any alcoholic beverages except for the personal consumption of the vendor, the vendor's family and guest in any building or room other than the building or room shown in the diagram accompanying his or her license application or in another building approved by the division.

12. MB Doral presented evidence that it has applied for, and received, an OPS permit for storage facilities in Miami-Dade County, where distributors are able to deliver alcoholic beverages, and which are subject to inspection.

13. MB Doral also presented evidence that it previously applied for an OPS permit outside of Miami-Dade County, which DABT denied.

14. On September 28, 2018, MB Doral applied for an OPS permit at a location outside of Miami-Dade County. In a cover letter accompanying this application, Mr. Terminello outlined his concerns with the OPS Rule's restriction on OPS permits outside of the county of the licensee.

15. With respect to the Electric Daisy Carnival, in Orange County, and the Rip Tide Music Festival, in Broward County, MB Doral presented evidence of what it contended were increased costs incurred in supplying alcoholic beverages to these catered events, because it was unable to store such beverages in the same county as the event.^{3/}

JAPC CORRESPONDENCE

16. JAPC corresponded with DABT numerous times concerning the OPS Rule over, approximately, the past 14 years.

17. Between 2005 and 2018, much of this correspondence consisted of JAPC's concerns with the following in the OPS Rule:
(a) whether DABT should remove citation to section 561.07, which

the Florida Legislature had repealed; (b) an explanation why DABT cites to section 565.03(2) as a law implemented; and (c) whether DABT should specifically incorporate any permit forms it utilizes in the OPS Rule.

18. DABT, in correspondence dated September 22, 2017, responded that: (a) it will amend the OPS Rule to remove the citation to section 561.07, and to correct a typographical error so that section 561.11 would be the rulemaking authority citation; (b) the Florida Legislature moved section 565.03(2) to section 565.03(3) in 2013; and (c) it will pursue rule development as needed to incorporate the applicable permit form.

19. On November 29, 2018, JAPC sent a letter to DABT concerning the OPS Rule that stated, in part:

This rule provides that manufacturers, rectifiers, distributors, vendors, and cooperatives or pool buying vendors requiring additional storage outside of their licensed premises must obtain a permit, without a fee, provided the storage room is located in the same county as the parent place of business of the licensee or agent of the vendor to whom the permit was issued.

Please explain the division's statutory authority to limit the permits for such storage rooms to the same county where the licensee is located. See § 565.03, Fla. Stat. ("Warehouses of a licensed distributor used solely for storage and located in the county in which the license is issued to such distributor shall not be construed to be separate establishments or branches."). It does not appear that section 565.03(3) limits

such storage warehouses to the licensee's county.

20. However, in a letter dated January 29, 2019 (after the date of the final hearing on MB Doral's existing rule challenge), JAPC provided the following comments concerning the OPS Rule:

61A-4.020: It appears that section 565.03(7) should be added as rulemaking authority.

Please explain why section 565.408 is cited as a law implemented.

It appears that section 561.02(11), section 561.17(1), and section 562.41 should be added as laws implemented.

61A-4.020(1): This subsection incorporates by reference Form DBPR ABT 6017, Application and Inspection Report for Off-Premises Storage Permit, with an indeterminate effective date. Please ensure that the effective date of the form is included in the rule text on the form when the rule is filed for adoption. See § 120.545(1)(i), Fla. Stat.

Please explain why the rule text refers to the form as an "Inspection Report." See § 120.545(1)(i), Fla. Stat.

The title of the form is inconsistent in the rule text and the form. The second and third unnumbered pages of the form refer to its title as "Application for Off-Premises Permit," whereas the title of the form in the rule text is, "Application and Inspection Report for Off-Premises Storage Permit." Please correct the rule or the form to make the titles consistent.

Form DBPR ABT 6017

Please explain why the form does not list the persons and entities required by section 561.17(1), which states in part that, "[t]he

applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part." See § 120.52(8)(c), Fla. Stat.

21. Notably, JAPC's January 29, 2019, letter did not raise or mention issues it raised in its November 29, 2018, letter, namely, DABT's statutory authority to limit the permits for such storage rooms to the same county where the licensee is located. The parties presented no additional evidence concerning whether JAPC intends to further express concern with any of the issues raised in the November 29, 2018, letter.

CONCLUSIONS OF LAW

22. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.54, 120.56, 120.569, and 120.57(1).

23. Under section 120.56(1)(a), "[a]ny person substantially affected by a rule . . . may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." A petitioner may challenge an existing rule at any time during its existence. See § 120.56(3)(b), Fla. Stat.

24. A party is substantially affected if the rule will (a) result in a real or immediate injury in fact, and (b) the alleged interest is within the zone of interest to be protected

or regulated. See Jacoby v. Fla. Bd. of Med., 917 So. 2d 358, 360 (Fla. 1st DCA 2005). MB Doral established that the OPS Rule substantially affects it because DABT has denied its application for an OPS permit in a county outside of Miami-Dade County, and because MB Doral is within the zone of interest to be protected. DABT did not challenge MB Doral's standing to challenge the OPS Rule.

25. Pursuant to section 120.56(3)(a), MB Doral has the burden of proving by a preponderance of the evidence that the OPS Rule is an invalid exercise of delegated legislative authority as to the objections raised.

26. MB Doral challenges the OPS Rule as an invalid exercise of delegated legislative authority. Section 120.52(8) provides, in pertinent part^{4/}:

"Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

* * *

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

* * *

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent and policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

27. The OPS Rule identifies section 516.11 as its specific authority, which DABT has conceded is a typographical error. DABT posits that section 561.11 is the appropriate citation to the specific authority for the OPS Rule. MB Doral's Proposed Final Order does not take issue with this typographical error. The undersigned concludes that the OPS Rule is not invalid because of this typographical error.

28. Section 561.11, which provides DABT with a general grant of rulemaking authority, states, in pertinent part:

[DABT] has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Beverage Law.

Section 561.01(6), defines the "Beverage Law" as chapters 561 through 568.

THE OPS RULE DOES NOT EXCEED DABT'S RULEMAKING AUTHORITY AND DOES NOT ENLARGE, MODIFY, OR CONTRAVENE SECTION 562.03

29. MB Doral's primary contention is that section 562.03 does not contain explicit restrictions concerning the county in which a licensee's off-premises storage can be located; thus, the OPS Rule's restriction of off-premises storage location to the county of the licensee, it argues, exceeds DABT's rulemaking authority and enlarges, modifies, or contravenes section 562.03.

Section 562.03 states:

Storage on licensed premises.—It is unlawful for any vendor to store or keep any alcoholic beverages except for the personal consumption of the vendor, the vendor's family and guest in any building or room other than the building or room shown in the diagram accompanying his or her license application or in another building or room approved by the division.

30. The issue of whether a rule is an invalid exercise of delegated legislative authority under section 120.52(8)(b) and the "flush-left" provision must be determined on a case-by-case

basis. See S.W. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc., 773 So. 2d 594, 599 (Fla. 1st DCA 2000).

31. In United Faculty of Florida v. State Board of Education, 157 So. 3d 514, 517 (Fla. 1st DCA 2015), the First District held:

Section 120.536(1) and the flush-left paragraph in section 120.52(8) require a close examination of the statutes cited by the agency as authority for the rule at issue to determine whether those statutes explicitly grant the agency authority to adopt the rule. As this court famously stated in *Save the Manatee Club*, the question is "whether the statute contains a specific grant of legislative authority for the rule, not whether the grant of authority is specific enough. Either the enabling statute authorizes the rule at issue or it does not. 773 So. 2d at 599 (emphasis in original). *Accord Bd. of Trs. of the Internal Improvement Trust Fund v. Day Cruise Ass'n, Inc.*, 794 So. 2d 696, 700 (Fla. 1st DCA 2001) ("[A]gencies have rulemaking authority only where the legislature has enacted a specific statute, and authorized the agency to implement it"); see also *Fla. Elections Comm'n v. Blair*, 52 So. 3d 9, 12-13 (Fla. 1st DCA 2010) (explaining that the definition of "rulemaking authority" in section 120.52(7) does not further restrict agency rulemaking authority beyond what is contained in the flush-left paragraph in section 120.52(8), as construed by this court in *Save the Manatee Club* and subsequent cases).

32. The United Faculty of Florida court further held:

[I]t is not necessary under *Save the Manatee Club* and its progeny for the statutes to delineate every aspect of tenure that the Board is authorized to address by rule;

instead, all that is necessary is for the statutes to specifically authorize the Board to adopt rules for college faculty contracts and tenure, which the statute clearly do.

Id. at 517-18.

33. As discussed in paragraphs 18, 27 and 28 above, the OPS Rule relies on section 561.11 as specific authority. The OPS Rule cites to sections 561.07, 562.03, and 565.03(2) as the law implemented. As discussed in paragraph 18, DABT has undertaken rulemaking efforts to correct the latter citation, as the Florida Legislature moved section 565.03(2) to section 565.03(3) in 2013.^{5/}

34. Section 562.03, which is part of the Beverage Law, reflects the Florida Legislature's grant of authority for DABT to approve of locations for off-premises storage of alcoholic beverages. It provides the mechanism by which a vendor can seek to store alcoholic beverages: in "the building or room shown in the diagram accompanying his or her license application[;]" or "in another building or room approved by the division."

35. The undersigned concludes that the OPS Rule does not exceed DABT's rulemaking authority. The statutes cited in the OPS Rule provide DABT with the necessary rulemaking authority for the OPS Rule. Namely, section 562.03's pronouncement that a vendor may store alcoholic beverages "in another building or room approved by the division[]" provides DABT with the ability to

restrict the locations where alcoholic beverages obtained for the purpose of resale are stored, as well as the ability to approve additional locations for off-premises storage. The OPS Rule is a permitted effort to implement or carry out the OPS Rule with more detail. See Save the Manatee Club, 773 So. 2d at 599.^{6/}

36. The undersigned further concludes that the OPS Rule does not enlarge, modify, or contravene the specific provisions of the law implemented, namely, section 562.03. The "law implemented" is the "language of the enabling statute being carried out or interpreted by an agency through rulemaking." § 120.52(9), Fla. Stat. By imposing a county-based limitation, the OPS Rule is both consistent with, and provides clarity to, section 562.03's pronouncement that a vendor may store alcoholic beverages "in another building or room approved by the division." Additionally, the OPS Rule provides meaningful and understandable standards to licensees. See Dep't of Bus. & Prof'l Reg. v. Dania Entm't Ctr., LLC, 229 So. 3d 1259, 1266 (Fla. 1st DCA 2017) (holding that the role of an agency is "to provide meaningful and understandable standards").^{7/}

THE OPS RULE IS NOT VAGUE, DOES NOT FAIL TO ESTABLISH ADEQUATE STANDARDS FOR AGENCY DECISIONS, AND DOES NOT VEST UNBRIDLED DISCRETION IN THE AGENCY

37. MB Doral contends that the OPS Rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency, under section 120.52(8)(d),

because it references "parent place of business," which the Beverage Law fails to define, and because it exempts "common carrier vendors" from the "same county" limitation in rule 61A-4.020(1).

38. In State v. Peter R. Brown Construction, Inc., 108 So. 3d 723, 728 (Fla. 1st DCA 2013), the First District held that an administrative rule is invalid under section 120.52(8)(d) if:

[I]t forbids or requires the performance of an act in terms that are so vague that persons of common intelligence must guess at its meaning and differ as to its application. Generally, where words or phrases are not defined, they must be given their common and ordinary meaning.

39. MB Doral is correct that the Beverage Law does not appear to define "parent place of business," although section 563.065, an unrelated provision of the Beverage Law, references this term.^{8/} However, MB Doral failed to establish that "parent place of business" is vague. As detailed in paragraphs 2 through 6 in the Findings of Fact above, DABT ties certain licenses, such as the quota license it issued to MB Doral, to the county in which the licensee intends to operate. As paragraph 8 found, MB Doral may lawfully cater events at locations outside of Miami Dade County pursuant to section 561.20(2)(a)5. MB Doral did not present evidence that it, or any other individual or entity, had to guess at the meaning of "parent place of business." Rather, a review of the record

evidence, including the testimony of Mr. Terminello and Mr. Larry, demonstrates that the parties understood this term, and its purpose and effect under the OPS Rule. It is likewise obvious to the undersigned that this term refers to the county in which the licensee operates, and provides meaningful and understandable standards to licensees.

40. Similarly, MB Doral's contention that the OPS Rule is vague because it exempts "common carrier vendors" from the "same county" limitation is unpersuasive. Without taking a deep dive into all of the complexities of the Beverage Law, the parties presented evidence at the final hearing, and referenced various provisions of the Beverage Law, to show that a quota license, such as the license belonging to MB Doral, is tied to the county in which the licensee operates, but could provide the licensing authority to cater events at locations outside of that county. Other provisions of the Beverage Law limit how, and where, other licensees may operate. See, e.g., § 561.14, Fla. Stat. DABT issues "common carrier licenses" to licensees that operate fleets of buses, airplanes, steamships, or trains throughout Florida. See § 565.02(2) and (3), Fla. Stat. Thus, the Beverage Law explicitly permits "common carrier vendors" to operate throughout the state, regardless of county. Accordingly, the OPS Rule is not vague, does not fail to establish standards for DABT decisions, and does not vest unbridled discretion in DABT because

it limits the off-premises storage of alcoholic beverages to the county in which MB Doral, who has a quota license, operates.

THE OPS RULE IS NOT ARBITRARY OR CAPRICIOUS

41. MB Doral contends that the OPS Rule is arbitrary or capricious, under section 120.52(8)(e), because it allows a different type of licensee, or a non-employee of the licensee, to potentially store alcoholic beverages off-premises in a different county, or a residence or garage, but prohibits MB Doral from doing so.

42. MB Doral further presented evidence of what it contended were increased costs incurred in supplying alcoholic beverages to certain catered events, without the ability to store such beverages in the same county as the event, to support its contention that the OPS Rule is arbitrary or capricious.

43. Pursuant to section 120.52(8)(e):

A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational

See Dep't of Health v. Bayfront Med. Ctr., Inc., 134 So. 3d 1017 (Fla. 1st DCA 2012); Bd. of Trs. of the Int. Imp. Trust Fund v. Levy, 656 So. 2d 1359 (Fla. 1st DCA 1995).

44. MB Doral failed to meet its burden to show that the OPS Rule is not supported by logic or the necessary facts, or that DABT adopted it without thought or reason, or that the OPS Rule

is irrational. DABT presented evidence, and the Beverage Law demonstrates, that DABT ties certain licenses, such as the quota license it issued to MB Doral, to the county in which the licensee intends to operate. Although there is an exemption to this county-specific restriction for catered events, see § 561.20(2)(a)5., MB Doral has failed to demonstrate that the OPS Rule's requirement that off-premises storage be located in the same county as those certain licenses is arbitrary or capricious.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

A. Florida Administrative Code Rule 61A-4.020 is a valid exercise of delegated legislative authority;

B. Pursuant to section 120.595(3), the undersigned concludes that MB Doral did not participate in these proceedings for an improper purpose, as defined in section 120.595(1)(e); and

C. The undersigned retains jurisdiction to consider MB Doral's unadopted rule challenge, which is currently stayed, pursuant to section 120.56(4)(b) and the January 25, 2019, Order Granting Respondent's Motion to Bifurcate and Stay Proceedings.

DONE AND ORDERED this 21st day of February, 2019, in
Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of February, 2019.

ENDNOTES

^{1/} Mr. Terminello originally appeared as co-counsel for MB Doral in this proceeding. After the undersigned inquired as to whether he could appear as a fact witness at the final hearing, Mr. Terminello moved to withdraw, which the undersigned orally granted at the final hearing. Subsequently, on January 28, 2019, the undersigned granted Mr. Terminello's motion to withdraw as counsel, nunc pro tunc to the beginning of the final hearing on January 24, 2019.

^{2/} The number 23 reflects that DABT issued MB Doral's license for use in Miami-Dade County.

^{3/} For example, MB Doral introduced invoices for shipping costs, as well as equipment rental to transport and move alcoholic beverages, as evidence of what it contends are increased costs associated with catering events outside of Miami-Dade County.

^{4/} MB Doral's Petition alleges that the OPS Rule is invalid pursuant to section 120.52(8)(b) through (e), as well as the "flush-left" paragraph.

^{5/} Section 565.03(3) states:

Distributors authorized to do business under the Beverage Law, unless otherwise provided, shall pay a state license tax of \$4,000 for each and every establishment or branch they may operate or conduct in the state. However, in counties having a population of 15,000 or less according to the latest state or federal census, the state license tax for a restricted license shall be \$1,000, but the holder of such a license shall be permitted to sell only to vendors and distributors licensed in the same county, and such license shall contain such restrictions. In such counties, licenses without such restrictions may be obtained as in other counties, but the tax for a license without such restrictions shall be the same as in other counties. Warehouses of a licensed distributor used solely for storage and located in the county in which the license is issued to such distributor shall not be construed to be separate establishments or branches.

^{6/} The Save the Manatee Club court held:

A rule that is used to implement or carry out a directive will necessarily contain language more detailed than that used in the directive itself. Likewise, the use of the term "interpret" suggests that a rule will be more detailed than the applicable enabling statute. There would be no need for interpretation if all of the details were contained in the statute itself.

Save the Manatee Club, 773 So. 2d at 599.

^{7/} Although raised in the Petition and the Joint Prehearing Stipulation, MB Doral does not address, in its PFO, whether the provision of the OPS Rule that prohibits DABT from issuing OPS Permits "to a structure which is part of the residence or garage of a licensee or any employee of any licenses[]" exceeds DABT's rulemaking authority, or enlarges, modifies, or contravenes section 562.03. Regardless, the undersigned concludes, for the reasons stated in paragraphs 29 through 36, that DABT did not

exceed its rulemaking authority, and the OPS Rule does not enlarge, modify, or contravene the specific provisions of the law implemented, as to this provision of Florida Administrative Code Rule 61A-4.020(1).

^{8/} Section 563.065 states:

Nothing in the Beverage Law shall prohibit licensed distributors of malt beverages from charging different malt beverage prices according to county, according to the branch of a distributor's parent place of business, according to whether a vendor sells malt beverages on premises or off premises, or according to quantity sold, as long as the price differentials are filed in advance with the Department of Business and Professional Regulation as provided by rule. (Emphasis added).

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.