



LIQUOR LEGISLATION IN THE WESTERN CAPE: IMPACT ON SHEBEENS

1. Introduction

After the Minister's Bambanani visit to the Helderberg, the Directorate: Policy Advice was tasked to assess the current liquor legislation and the impact thereof on shebeens. This paper attempts to analyse the current legislation pertaining to the sale of liquor as it has an impact on the control of shebeens. This will be conducted by analysing national, provincial and local policies pertaining to the sale of liquor.

2. Liquor Act (Act 27 of 1989)

The production and sale of liquor in South Africa is regulated on a national level. The Liquor Act (Act 27 of 1989) was introduced in 1989 to regulate the liquor industry countrywide. This Act was amended in 1995 to make provision for the establishment of nine liquor boards, one for each of the provinces. Applications, in terms of section 9, can be made to a provincial liquor board for a licence. The following kinds of licences are provided:

Licences for the consumption of liquor on the premises:

- Hotel liquor licences;
- Restaurant liquor licences;
- Wine-house licences;
- Theatre liquor licences;
- Club liquor licences;
- Sorghum liquor licences;
- Special licences;
- Temporary liquor licences;
- Occasional licences

Licences for the consumption of liquor off the premises:

- Wholesale liquor licences;
- Brewers' licenses;

- Grocer's wine licences;
- Wine farmers' licences;
- Sorghum beer brewers licences;
- Sorghum beer licences;
- Special licences;
- Producers' licences

The Act requires that applications be lodged with the local magistrate's court and an appropriate communications mechanisms must be set up between the local authority and the relevant magistrate's court, should this still be required. The provisions of the Act cover a wide range of issues, including grounds for disqualification of applicants, conditions applicable to various types of licences (hours of operation, storage, types of liquor to be sold and the nature of the premises), the validity, transfer and removal of licences, designated police officers and inspectors.

Procedures for the submission and processing of applications for liquor licences are set out in regulations promulgated in terms of Section 182 of the Act. Applications must, amongst others:

- Be accompanied by a comprehensive written motivation;
- Include a detailed plan of the premise;
- Be advertised in the Government Gazette; and
- Be open for inspection at the magistrate's office for a specified period of time.

3. A Proposed Liquor Policy for the Western Cape: Draft

In the absence of the provincial legislation on the management of the illegal sale of liquor, the Department of Finance and Economic Development developed a proposed Liquor Policy for the Western Cape as a discussion document. The proposed liquor policy of the Western Cape attempts to regulate and ensure that the unlicensed traders (shebeens) are given an opportunity to apply for legal licenses.

The draft proposes that the new legislation must provide a moratorium for a period of six months or more to existing unlicensed traders that apply for licences. The requirements that an existing unlicensed trader, who is an applicant, will have to meet to be considered for the moratorium are:



- Proof that a duly completed liquor licence application has been lodged with the municipality;
- Proof that a duly completed application for the correct land use requirements has been lodged with the municipality;
- Submission of an application for moratorium, accompanied by the applicants' fingerprints and proof of being an existing unlicensed trader on the premises for which a licence is being sought for a period of three years or longer
- Applications must be submitted to the relevant municipality for a liquor licence and the correct land use application.
- A designated police officer must determine whether the moratorium should become applicable as he or she is in a position to determine whether the applicant is a person who qualifies to be a liquor licence holder.

4. Problems with the current legislation

Shebeen owners can apply for the liquor licence to sell liquor on their premises; however, they would also need to apply to the relevant municipality for a correct land use. The town planning aspect is the major challenge for shebeen owners as they sell liquor in residential areas that are not meant for business. Some of the common problems identified are as follows:

- The application process is complicated. Many applicants do not understand the process and find them to be too cumbersome and lengthy.
- The application is expensive. An application fees to the Liquor Board amounts to a total of R360. 00. This is, however, a fraction of the costs that applicants may have to incur should they not be able to process their applications themselves. Consultant fees are exorbitant and lack of understanding of the process by applicants leaves them no choice but to use consultants or remain illegal. Consultant fees range between R5000. 00 and R11000. 00 for both the liquor licence and zoning application and between R3800. 00 and R5000. 00 for licence application only. Town planning consultants' for a rezoning application can cost a prospective applicant an average R7000. 00. Most operators run very tight budgets and simply cannot afford these fees.
- Getting zoning approval is difficult. Applicants have found that over and above



the difficult process, getting zoning approval cannot be guaranteed. Perceptions and prejudices within communities and approval authorities' structures are more often than not seen as deciding factors in the decision to approve or reject a zoning application for a shebeen.

- Duplication of processes especially the public participation processes for the liquor licence application and the zoning application is time consuming and unnecessary.
- Many of shebeen owners are wary of the negative perceptions held in respect of shebeens by members of the community. These outlets are especially in the coloured communities, usually associated with crime, drug peddling and other anti-social behaviour. Seeking public approval for your operation in an environment where the community seems to have no desire to objectively consider each application on its merits is considered not worth the effort (Draft Shebeen Policy, City of Cape Town, 2002, 8).

5. Conclusion

Even though there is national legislation on the sale of liquor in the form of the Liquor Act 27 of 1989 and the amendments of 1995, there is no provincial legislation. The current draft of Liquor Policy is still under discussion by the role-players in the Western Cape and is not in operation. This means that all shebeen traders are operating illegal at this point in time. The application process for liquor licence is complicated and too cumbersome. Therefore, it becomes difficult for the illiterate shebeen owners to understand and then they prefer to stay illegal.

6. Recommendations

A provincial legislation, which governs the sale of liquor in the Western Cape, must be developed and be implemented as a matter of agency. In the meanwhile shebeen owners must be encouraged to apply and the following should be made available to them:

- Information regarding the liquor licence application process;
- Information regarding the land use application process;
- Assistance with the completion of the liquor licence application forms;
- Assistance with the completion of the land use application forms;



- Guidance in respect of obtaining community approval (neighbours' consent) in accordance with Council's public policy and requirements of the Liquor Act;
- Serve notices on surrounding property owners where required;
- Lodge application for advertisement in the Government Gazette with Government Printer;
- Receive objections, if there's any;
- Inform objectors and applicants of representation to the liquor board.

References

Department of Finance and Economic Development: 2003. A Proposed Liquor Policy for the Western Cape.

Macroplan Town and Regional Planners. 2002. City of Cape Town: Towards a Shebeen Policy, Durbanville.

The Liquor Act No 27 of 1989, Republic of South Africa.

