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# Recent Developments: Coalition for Open Doors v. Annapolis Lodge No. 622: Alcoholic Beverage Licensing for Private Clubs with Discriminatory Membership Policies Will Be Denied and Post-Judgment Intervention Will Be Permitted When the Government Fails to Appeal an Unfavorable Judgment

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*Coalition for Open Doors v. Annapolis Lodge No. 622:*

**ALCOHOLIC  
BEVERAGE  
LICENSING FOR  
PRIVATE CLUBS  
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*Coalition for Open Doors v. Annapolis Lodge No. 622*, 333 Md. 359, 635 A.2d 412 (1994) was the precursor to Senate Bill 560, which prohibits discrimination by private clubs in the State of Maryland that apply for Class C alcoholic beverage licenses. Last January, the Court of Appeals of Maryland held that a local government may deny alcoholic beverage licensing to clubs engaging in discriminatory membership policies if state liquor licensing regulations fail to address that area of the law. The court also permitted post-judgment intervention by interested parties when a local government fails to appeal an unfavorable judgment.

The Annapolis Lodge No. 622 Benevolent and Protective Order of Elks ("the Lodge") is a non-profit Maryland corporation and a branch of the National Elks. The Lodge and the National Elks deny membership to women, except in a limited capacity as members' wives, dependents, or affiliates of the Lodge's Women's Auxiliary. The dispute began when the Lodge attempted to renew its state issued Class C alcoholic beverage license.

Under section 7.12.430 of Annapolis Ordinance 0-11-90 ("the ordinance"), private clubs cannot maintain a liquor license if they deny membership "on the basis of race, sex, religion, physical handicap or national origin." As a condition to its liquor license renewal, the Lodge was required to submit documentation showing that its by-laws were non-discriminatory. The Lodge requested permission from the National Elks to amend its by-laws to admit women. The request was denied, and Annapolis refused to renew the Lodge's license. The Lodge filed a claim in the Circuit Court for Anne Arundel County

seeking a declaratory judgment to invalidate the ordinance and an injunction ordering the city to reconsider its license application.

The circuit court held that the Maryland Annotated Code provision regulating statewide alcoholic beverage licensing required a relation between the city ordinance and actual alcohol consumption in the facility. After finding no relation between these two factors, the circuit court further held that section 5(e) of Article 49B of the Maryland Code prohibited local governments from regulating discrimination by private clubs. *Annapolis Lodge* at 365.

After the circuit court's favorable ruling for the Lodge, the City Council failed to file its appeal of right. Consequently, the Coalition for Open Doors ("the Coalition"), a civil and women's rights organization, joined with other interested parties and filed a motion to intervene under both permissive intervention and intervention of right theories. The circuit court granted intervention and the Lodge appealed from the circuit court's order granting the motion. The intervenors and the Lodge petitioned the Court of Special Appeals of Maryland and before review by the intermediate court, the Court of Appeals of Maryland granted certiorari. The Court of Appeals of Maryland affirmed the motion to intervene but reversed the declaratory judgment and injunction in favor of the Coalition.

On appeal, the court first considered the intervention issue. The Lodge argued that the court erred in granting the motion because post-judgment intervention is only permitted in exceptional circumstances. *Id.* at 369. The court was concerned that the rights of interested parties would be adversely

affected since the City Council failed to appeal the case. Such a disadvantage created an exceptional circumstance which would justify intervention. *Id.* at 369-70 (citing *Board of Trustees v. City of Baltimore*, 317 Md. 72, 562 A.2d 720 (1989)). The Lodge also challenged the intervention by claiming the motions were not timely filed. The court pointed out that intervention was justified because the motions were filed four days after the City Council neglected to appeal the case. *Annapolis Lodge* at 370-71. The court of appeals affirmed the motions to intervene and next considered the circuit court's invalidation of the Annapolis ordinance.

The Lodge argued that Article 2B, the state law concerning the "regulation, control and distribution of alcoholic beverages" in Maryland, *Id.* at 371, did not grant Annapolis the authority to enact the city ordinance. *Id.* However, the court found that Article 2B, sec. 158(d)(1), actually permitted Annapolis to regulate liquor licensing in conjunction with the provisions of the article. *Id.* at 374-75. The court also suggested that the regulation was in fact related to the purchase of alcohol because it mandated the admission of women whom had been denied membership in the past. As a result, the regulation affected the number of patrons permitted to consume alcohol on the premises. *Id.* at 375-77. The Lodge also insisted that the ordinance was inconsistent with the state public accommodations law of Article 49B, sec. 5(e), because the legislature intended to exclude private clubs from the general anti-discrimination rule of Section 5(a) of the article. *Id.* at 378-79. The Lodge claimed that the Maryland Code essentially permit-

ted discrimination in membership criteria, while the Annapolis ordinance prohibited such discrimination, thus creating a definite conflict with state law and forcing preemption. *Id.* at 379-80.

The court rejected the Lodge's preemption argument based on prior decisions which held that the exclusion of "a particular activity" from state law does not indicate an "intent to preempt local legislation regulating or prohibiting that activity." *Id.* at 380 (citing *National Asphalt v. Prince George's County*, 292 Md. 75, 79, 437 A.2d 651, 653 (1981); *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 391-393, 396 A.2d 1080, 1085-1086 (1979); *City of Baltimore v. Sitnick & Firey*, 254 Md. 303, 312-326, 255 A.2d 376, 380-386 (1969)). In effect, a state's exclusion of an activity "amounts to no regulation at all and accordingly leaves the field open for regulation at the local level." *Id.* at 381 (quoting *City of Baltimore v.*

*Sitnick & Firey*, 254 Md. at 324, 255 A.2d at 385-386)).

The significance of *Coalition for Open Doors v. Annapolis Lodge, No. 622* is threefold. First, the case solidifies the procedural rules regarding post-judgment intervention. A losing party's failure to appeal creates an opportunity for parties with standing to file timely motions to intervene in order to prosecute on appeal. Second, the case clarifies the general rule regarding preemption. Where state law excludes an activity from a particular regulation, local government is not prohibited from enacting appropriate legislation regarding that activity. Finally, this decision strengthens the rights of individuals within the State of Maryland to apply for club membership without regard to race, sex, religion, physical handicap or national origin.

-Kimberley S. Wright Jones

