

STATE OF MINNESOTA  
COUNTY OF RAMSEY

FILED  
Court Administrator  
JUL 8 2011  
By BH Deputy

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

Case Type: Civil

Court File No.: 62-CV-11-5203

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In Re Temporary Funding of Core  
Functions of the Executive Branch of  
The State of Minnesota

**AFFIDAVIT OF FRANK BALL  
IN SUPPORT OF PETITION  
FOR TEMPORARY FUNDING**

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STATE OF MINNESOTA )  
  ) ss.  
COUNTY OF RAMSEY )

**FRANK BALL**, being first duly sworn on oath, states:

1. I am the Director of the Minnesota Licensed Beverage Association (the "MLBA").
2. The MLBA is a trade association that, since 1952, represents the interests of licensed beverage retailers in the State of Minnesota. MLBA helps retailers with information resources, educational programs and government affairs services designed to promote and protect their business.
3. Between 2000 and 2005 I served as the Director of Alcohol and Gambling Enforcement for the Minnesota Department of Public Safety.
4. Alcohol is a highly regulated commodity. One regulatory requirement for retailers is to obtain a "permit to purchase alcoholic beverages containing more than 3.2 percent of alcohol by weight from any manufacturer or wholesaler or there agent or representative." Minn. Admin R. 7515.0210 Subp. 3. The identification cards issued for this purpose are commonly known as "Buyer's Cards."

5. Wholesalers are forbidden to sell alcoholic beverages containing more than 3.2 percent of alcohol to retailers who lack a Buyer's Card. The status of the retailers licensure is maintained by Alcohol and Gambling Enforcement on an electronic database. Given the serious penalties that would attend a violation, wholesalers are diligent in checking the status of a retailer's Buyer's Card before completing a sale.

6. Attached as Exhibit A is a notice from the current Interim Director of Alcohol and Gambling Enforcement dated June 28, 2011, informing the industry that "Retail ID Cards (Buyer's Cards) expiring during this time period will also not be renewed." Although the regulatory side of the agency would be suspended as non-essential by reason of the government shutdown, enforcement would continue. The Director advised that "Delivery to an expired account [lacking a buyer's card] by a wholesale distributor would be a violation."

7. Based on my contacts with retail members, I know that hundreds of retailers now lack a valid Buyer's Card -- by sheer luck of the draw and by virtue of no rational basis. Such cards expire on a rolling basis. They are renewed throughout the year depending on when the initial card is issued.

8. Alcohol and Gambling Enforcement aggravated the problem by closing its doors at noon on June 29, 2011. As a consequence, a number of retailers who attempted to renew their Buyer's Cards on June 29 and June 30 were unable to do so.

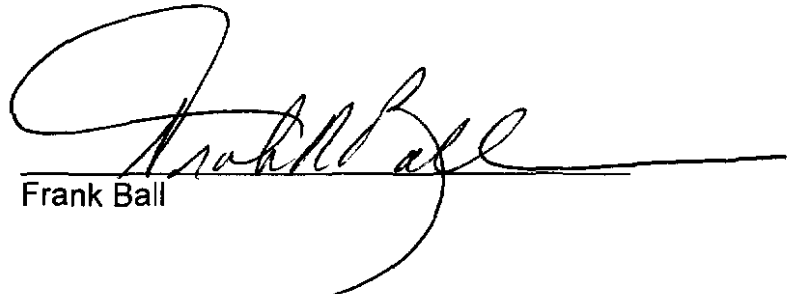
9. There are now two classes of retailers in this State: those lucky enough to have their cards renewable before June 30 and those who face imminent loss of business and livelihood by reason of a post-shutdown renewal date.

10. I have discussed this issue with the attorney for the Commissioner of Public Safety and with the Interim Director of Alcohol and Gambling Enforcement. On behalf of Minnesota retailers, I have requested that the Director issue a Memorandum of Understanding certifying to wholesalers that the retailer in question qualified for a renewed Buyer's Card and that a sale could be effected without enforcement action. The Commissioner and Interim Director refuse to issue any such certification.

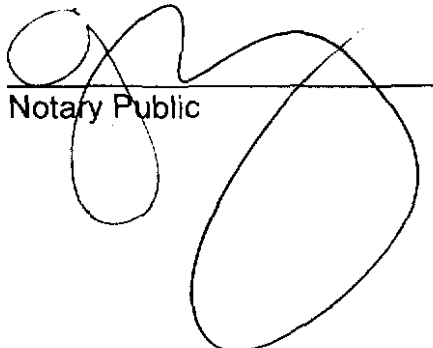
11. Based on my experience as past Director, to process the Buyer's Card renewals, verify entitlement, and manage the electronic database will require the services of a clerical employee working half-time.

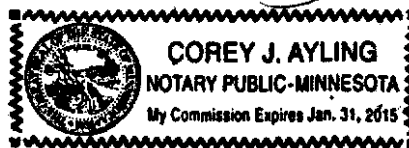
12. Many retailers – some with 50 to 75 years of continuous operation – face imminent and irreparable loss of business as a result of the arbitrary renewal date of their Buyer's Cards. The MLPA therefore requests that the State of Minnesota protect the rights of citizen retailers by funding the clerical staff necessary to issue Buyer's Cards.

***Further your affiant saith not.***

  
Frank Ball

Subscribed and sworn  
To before me this 8  
Day of July, 2011.

  
Notary Public



# MINNESOTA DEPARTMENT OF PUBLIC SAFETY



## Alcohol and Gambling Enforcement

444 Cedar Street • Suite 222 • Saint Paul, Minnesota 55101  
Phone: 651.201.7500 • Fax: 651.297.5259 • TTY: 651.282.6555  
www.dps.state.mn.us

June 28, 2011

Re: Effects of State Shutdown on Alcohol & Gambling Enforcement

Alcohol  
and Gambling  
Enforcement

ARMER/911  
Program

Bureau of  
Criminal  
Apprehension

Driver  
and Vehicle  
Services

Homeland  
Security and  
Emergency  
Management

Minnesota  
State Patrol

Office of  
Communications

Office of  
Justice Programs

Office of  
Traffic Safety

State Fire  
Marshal and  
Pipeline Safety

To whom it may concern:

The Alcohol & Gambling Enforcement Division (A&GED) is sending this letter out in preparation for a possible state government shutdown. As of the date of this letter, there is no budget agreement for the state government to continue operations into the start of the new fiscal year, which begins on July 1, 2011. Without a budget signed into law state agencies do not have authority to operate into the new fiscal year and therefore they must shutdown effective July 1.

The governor petitioned the court for the state to continue to provide critical services if there is a government shutdown. Ultimately the court will decide what critical services can continue, but under the governor's recommendation some A&GED services are not deemed critical. Because the A&GED has statewide law enforcement and regulatory authority, the law enforcement side of this agency is under consideration to continue its operations, but this has not yet been confirmed. If the law enforcement side of the A&GED does continue to operate during the shutdown, then only criminal investigations will continue to be conducted while the regulatory and licensing support side of the agency would not be operational.

Because of the possibility that this agency could be completely shut down or limited to only conducting criminal investigations for an indefinite time period, the A&GED wanted to let you know what to expect in terms of access to A&GED staff, licensing, reporting of incidents and other information relative to the duties of the A&GED so that you can plan accordingly.

### State Licensing for Alcohol & Gambling Devices

If you have a valid alcohol or gambling device license you may continue to operate and conduct business as usual. If your alcohol or gaming device license is expired or you do not have a state license then you are not authorized by law to conduct that form of business until you have a valid license.

In the event the A&GED shuts down, no state alcohol or gambling device license applications will be issued, received, or renewed and no other government entity is authorized to process these state licenses on behalf of the A&GED. You will have to wait until the A&GED is again open and processing license applications before you will receive your license.

### Status of Businesses that hold Alcoholic Beverage Licenses

The A&GED has identified the following liquor license and permit type entities that can no longer lawfully conduct business in Minnesota under the provisions of Minnesota Statute Chapter 340A.301, 302, 3055, 311, 315, 317, 401, 407 and Minnesota Rules



7515.0210 should their license or permit to conduct business expire during the government shutdown.

- All Alcoholic Beverage Licenses issued by A&GED including Manufacturer's, Importers, Wholesale Distributors, Warehouse Permit Holders, Ethyl Alcohol Permit Holders, Brokers, Consumption and Display Permits, Alcoholic Beverage Catering Permits, 2 a.m. Licenses, Common Carrier Licenses Sales Person ID Cards and Representative ID Cards.
- Retail ID Cards (Buyer's Cards) expiring during this time period will also not be able to be renewed. Delivery to an expired account by a wholesale distributor would be a violation.
- Brand Registrations for alcoholic beverages manufactured in and imported into Minnesota for sale will not be issued or renewed.
- Many retail licenses both original issue and renewal require approval from A&GED to operate. These licenses will be affected. Examples are Wine Licenses, Off-Sale Liquor Licenses, Temporary Intoxicating Liquor Licenses, Bed & Breakfast Licenses; County issued On Sale and Off-Sale Licenses and Club Liquor Licenses.

An expired permit or license may also have an impact on liquor liability insurance as required under the provisions of Minnesota Statute Chapter 340A.409.

**Communications: telephone, mail, e-mail, fax, and website**

In the event the A&GED shuts down or if the law enforcement only side remains operational there will be either no staff or very limited staff available, respectively, to answer telephones, receive mail or reply to e-mail after June 30, 2011. If, however, you would like to leave a telephone message, send an e-mail or mail correspondence to the A&GED you still can, but no communications will be officially received or responded to until the A&GED is again a functioning agency. The A&GED discourages sending anything via fax machine during a shutdown.

In the event of a shutdown, the A&GED has set-up an additional e-mail account for handling e-mails and that e-mail address is: [Alcohol.Gambling-Enforcement@state.mn.us](mailto:Alcohol.Gambling-Enforcement@state.mn.us) During the shutdown the Department of Public Safety and the A&GED website will be unavailable. This means licensing forms and other information normally on the A&GED website will be unavailable.

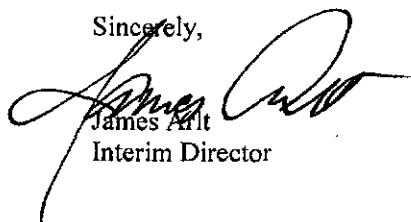
**Regulatory and Criminal complaints/investigations and Fingerprint record checks**

In the event the A&GED completely shuts down there will be no staff available after June 30, 2011, to receive or respond to regulatory complaints, license inspections or conduct investigations involving alcohol or gaming violations. In the event the law enforcement side is operational, special agents will be available to receive and handle complaints of criminal activity. During the shutdown, violations can still be reported to the A&GED via telephone, e-mail, U.S. Mail. Reported violations will either be reviewed by special agents if they are available during the shutdown or when the A&GED fully reopens for business.

During the shutdown, the A&GED will not be accepting or processing electronic fingerprint submissions or any other requests for criminal history record checks. The electronic fingerprint system can store up to one-thousand submissions that can be held until the A&GED can resume running record checks.

This letter is being sent out as a precautionary measure. If the state shutdown does occur it will no doubt be reported on by the various media news networks. The A&GED asks that you follow the news reports for the latest on if the shutdown does occur and if it does when the state agencies will be back open.

Sincerely,

  
James Arit  
Interim Director