



STATE OF NEW JERSEY

**OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

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Governor

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Attorney General

SHEILA Y OLIVER
Lt. Governor

DAVID P. RIBLE
Director

DATE

<NAME OF PERSON>
<ADDRESS>
<CITY_STATE_ZIPCODE>

Re: In the Matter of the Investigation of <NAME_OF_INVESTIGATION>
Agency Docket No. <CASE_NUMBER>

Dear <MR._OR_MS._LAST_NAME>:

You have been served a Demand for Testimony in the above-referenced matter. This demand requires you to appear and provide sworn testimony on the date set forth in the Demand for Testimony. You may be accompanied by your attorney during this proceeding. Recently, attorneys who have been permitted to accompany their clients during the taking of their sworn statements have been confused as to their role during those proceedings. In order to eliminate any such confusion in advance, the purpose of this letter is to advise you and your attorney regarding the nature of the aforementioned proceeding and your attorney's role therein should you decide to be accompanied by same.

On the aforementioned date, the Division of Alcoholic Beverage Control (Division) will take your statement as part of its administrative investigation of the above-referenced matter pursuant to the Director's authority as set forth in N.J.S.A. 33:1-35. Thus, although the procedure for the taking of these statements will be similar to a civil deposition in that you will be required to answer the Division's questions under oath, the proceeding is not a "deposition" as the term is generically understood in civil litigation (especially since no such litigation has been instituted at this date) nor is the proceeding governed by the New Jersey Court Rules. It is well-settled that a person appearing before an administrative agency has no constitutional right to the assistance of counsel, even though a witness' testimony might expose that witness to criminal charges in the future. In re Groban's Petition, 352 U.S. 330 (1957). See also, In re Bufanio, 119 N.J. Super. 302 (App. Div. 1972) (rejecting a claim by a witness before the Waterfront Commission who argued that testimony which he gave during an investigatory interview conducted by the Commission was improperly admitted into evidence at the Commission's hearing because he had been denied the right to counsel during the investigation); In re Tufi Application, 182 N.J. Super. 631 (App. Div.), cert. den., 91 N.J. 189 (1982) (holding that the Division of Gaming Enforcement did not violate appellant's due process rights when, in investigating his license application, it



deposed appellant without presence of counsel). Similarly, an employer which is the subject of an administrative investigation has no right to have its counsel attend the interview of its employee. In re Comprehensive Investigation of the School District of Newark, New Jersey, 276 N.J. Super. 354 (App. Div. 1994) (holding that a school district was not entitled to presence of counsel during interviews of school district personnel as a matter of due process under the New Jersey Constitution).

In addition, all liquor licensees, and the employees and agents thereof, have an affirmative duty “to facilitate, as far as may be in their power so to do, in any ... investigation, examination or inspection [conducted by the Division] and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever.” N.J.S.A. 33:1-35 (emphasis added). Accordingly, although you may, as a courtesy, have your attorney observe the taking of your statement, your attorney may not actively participate in this proceeding. Notwithstanding, you may consult with your attorney regarding the possible assertion of any legal privilege, if necessary. Please be advised, however, that neither you, nor your attorney, will be permitted to bring any electronic equipment into the proceeding. Nor may you or your attorney obtain a copy of the transcript of your sworn statements during the investigatory phase of this matter pursuant to N.J.A.C. 13:2-29.2(a)5. Of course, if you or the licensee with which you are affiliated is subsequently charged with administrative violations based upon said statement, the charged licensee would be able to obtain a copy thereof.

If you have any questions regarding the foregoing, please do not hesitate to contact me at the above number.

Very truly yours,

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY

By: _____
<DAG_NAME>
<DEPUTY_SENIOR_DEPUTY_OR_ASSISTANT>

Attorney General

c: Kevin Marc Schatz, Senior Deputy Attorney General
Chief, Enforcement Bureau