



## **Advisory Opinion 19-03: Use of ATC Letters of Authority for an Extended Period of Time**

### I. Background

The following question was posed to the Alcohol and Tobacco Commission:

1. May the Alcohol and Tobacco Commission grant a Letter of Authority (LOA) to operate at an existing licensed premises for a period of time, up to five years<sup>1</sup>, to accommodate construction of a new location or other extenuating circumstances where an application for transfer of location of the new location has been approved by the ATC?

Permittee operates an existing dealer location and wants to purchase a vacant lot, build a new store and transfer their existing permit. However, the requestor does not want to purchase the lot until the transfer of the permit goes to local board and is approved by the ATC, while still operating the existing store. Permittee wants to operate its existing dealer location under an LOA in order to transfer the permit while the new brick and mortar is being constructed.

### II. Analysis

The ATC understands the position that this business holder is in. Permittee essentially wants to vet the potential new location through the local board process before purchasing the land and investing in building a new brick and mortar store, but still operate its existing business after the permit has been transferred under an LOA. However, there are concerns with the ATC allowing businesses to operate under an LOA, rather than a permit, for a number of years.

The most glaring concern is the issue of tracking this internally within the ATC. The agency, already, is understaffed, so utilizing its current resources – both processors and Excise – to manually track which permittees are operating under an LOA and which permittees are operating under a permit would be inefficient.

Additionally, there would likely be years between the initial local board hearing vetting the location and when the location opens. It is important that remonstrators have the best opportunity to vocalize their support or opposition for a location.

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<sup>1</sup> After a meeting to discuss the advisory opinion request, applicant amended his request to two years.



### III. Conclusion

The ATC is willing to work with permittees in similar circumstances. The Commission's position is to file renewal and transfer paperwork at least 90 days before the permit is set to expire. The transferred permit will then go to local board and commission approval, upon which the Commission will draft an LOA for the business to continue its operations at the original location.

Indiana Code 7.1-3-1-3 states, a permit "shall be in force for one (1) calendar year only, including the day upon which it is granted," permits are tied to a specific address, and package liquor stores are issued on a population-based quota. There is no way for the Commission to vote on the transfer of a permit and then continue renewing the permit at a different location. So, the new location will either need to be ready for operation or the permit be put into escrow while operations cease at the original location one year after the transfer takes place.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2019 Indiana Code. Every advisory opinion is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.