

THE LICENSING PROFESSIONAL

Spring 2001 newsletter for NBBLO Members

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INSIDE

ELECTRONIC LICENSING

Is your community considering offering licensing tools through the Internet? Applications, renewals, fee and tax payments? If yes, you are not alone. If no, the opportunity to do so will probably be here sooner rather than later.

Recently, several articles have dealt with these opportunities, what citizens are interested in, and those communities and states that are exploring the possibilities.

Communities Joining Together

Governing magazine recently reported that 21 cities in King County Washington banded together to form the "Electronic Government Alliance." ("Cities Band Together to Put Permits Online," March 2001, p. 60). Its purpose is to work jointly on developing electronic government applications which will enable online permitting. One of the

examples given of the value of this project, is a plumber who works in several jurisdictions being able to go to one Web site and fill out one form to obtain a business license in each jurisdiction.

Surveys of Government and Constituents

A survey conducted last year of 45 federal, state, and local governments (Forrester Research, August 2000) compared electronic services to businesses offered by government in 2000 and 2001. Interestingly, the second most cited service in both years

"As governments are pushed into the rapid embrace of e-commerce, they are finding that some of the strongest demand is for online permitting and licensing."
(*Governing*, "e-Permitting 101," April 2001, p. 86).

was "license applications." Thirty-six percent of the respondents provided this service in 2000 and 56% anticipated it in 2001.

With regards to making payments via the Internet, corporate-tax payment was fifth at 13% in 2000 and 20% in 2001; fine payment was sixth (9% and 11%); and, sales-tax payment was eighth (2% and 11%). Thus, government is

moving in the direction of providing more services to businesses and at least four of the top eight services may be applicable to business licensing. The number two service is “license applications.” More than half of the governments surveyed will supply this service in 2001. Is your community considering this and what are the costs and issues involved in implementation? Is it a service that your licensees desire?

In 2000, another group was also surveying electronic government services, only from the perspective of what businesses want from government. (Momentum Research Group, commissioned by NIC, 2000). Those answers that may have applicability to licensing are highlighted.

Search court records	47%
Obtain or renew a professional license	43%
One-stop shopping for a new business	39%
Access criminal history	38%
Apply for a business permit	36%
Limited criminal history report	34%
Workers’ compensation info	33%
Employee driving records	31%
Track employee license renewals	29%

Over 40% of the respondents would like to

apply or renew a license over the Internet.

In addition, the same group also asked citizens what electronic services they want from government. While licensing was not directly mentioned, some of the requested services may have applicability.

Renew Driver’s License	47%
Vote on Internet	38%
Access one-stop shopping	36%
File state taxes	34%
State parks and make reservations	31%
Review police accident reports	29%
Pay parking tickets and other violations	28%
Review Real Estate Records	28%
Pay taxes by credit card	27%

Note that three of them (those highlighted) could have direct applicability to licensing. In sum, many governments see a need to provide business friendly services and an increasing number of businesses and citizens desire such services. The type of e-commerce that has applicability to business licensing involve basically three categories: first, filling out forms and submitting the information; second, electronic payment of taxes and fees; and, third the ability to access information about licensing, their own file or their employee files.

E-Taxes

“About 18 states and a handful of local governments offer Internet-based electronic filing for personal, property or business taxes.” There are two ways to pay taxes electronically, e-filing (like how the IRS receives payment) or through Internet filing. With e-filing, the tax is paid to a third party, like TurboTax who then pays the IRS. With online payments, the return is prepared electronically with help from a commercial tax-filing service. Then the tax and the return is filed through the Internet directly with the governmental entity. (*Civic.com*, “The Infancy of e-Taxes,” March 2001, p. 29).

Costs Associated with E-Licensing

Governing magazine has provided an excellent discussion of the difficulties and costs associated with putting licenses and permits online. (*Governing*, “e-Permitting 101,” April 2001, p. 86) “[W]hile the move to e-permitting [or licensing] can be popular and worthwhile, it’s also turning out to be more expensive and complicated than some governments anticipated.”

The article profiles the “Smart Permit project” and the experience of a group of Silicon Valley cities that have been working for six years to put building permits online. The group is even writing a book about the experience.

The cities learned a number of lessons from the experience. One important message is that just because the system is designed and implemented, it does not necessarily mean that the public will use it. Obtaining simple permits (65% to 75% of all construction permits) is the primary use of the system. Even though the technology can handle the submission of permit requests that require

structural drawings, the architects and city plans examiners are reluctant to use it. Both prefer the hard copies.

Another lesson is that use will not occur automatically. The service must be advertised and promoted. “This isn’t the field of dreams . . . Just because you build it, that doesn’t necessarily mean that they will come. You have to give users a good reasons to change their way of doing business” (“The Infancy of E-Taxes,” *supra* 2001, p. 31).

Finally, it is better to “automate something efficient.” In other words, it is better to first audit your existing licensing system to explore whether it can be more efficiently administered. Then take the better process and apply the technology to it Don’t assume that the method you are currently using is the best way to run a licensing program.

Many believe that the demand for such services will only increase. However, a word of caution. “[F]ew jurisdictions have found online permitting to be a big time- or money-saver yet. The start-up process— investing in technology, reengineering paper-based processes and training employees on the new systems— is expensive. Until e-permits are used widely,

employees must provide guidance on them while continuing to process paper applications.”

How to Pay for It?

While there may eventually be

significant savings in processing the paperwork, the financial benefit isn’t immediate. Those who apply online are doing your data entry for you and when payment is made online the money is directly deposited, without having to process funds or deal with bad checks. Unfortunately,

“[Constituents] are now demanding online services from their governments. That much is clear. How to fund it is less so” (*Governing*, “No Free Lunch Online,” August 2000, p. 29).

you will still have two systems, and in order to realize the anticipated savings, the software has to be written, the hardware housing the technology purchased, employees trained, and the new service advertised and promoted. Where does this funding come from?

“According to Dataquest Worldwide IT Services, a research arm of the Stamford, Conn.-based Gartner Group, spending on electronic tax and revenue systems by state and local governments is expected to grow from \$552 million in 1999 to \$972 million in 2004. And by 2006, local governments are expected to collect \$84 billion in fees and taxes online, according to Cambridge, Mass.-based Forrester Research” (*American City & County*, “Electronic Tax Systems Ease Filing,” October 2000, p. 12).

So, what financing methods can be utilized?

- * The traditional model of seeking a **general fund appropriation** and competing year to year for continued funding.
- * Use of government **grants and private donations** of money or labor from universities and other groups.
- * Treat it like another capital investment and **issue bonds** (Massachusetts did this in 1996).
- * Creation of **special enterprise-like technology funds** that don't have to fight for annual appropriations (Maryland did this. See their licensing site at blis.state.md.us which allows for state licensing of 18 different business occupations and professions).
- * Charge a **convenience or transaction fee** for online applications and payments.
- * Have a software company create the system and then the government pays them the cost to clear transactions or to store data on its servers. This is the **software-licensing model**.
- * **Sale of government-collected data** to fund

the system. A June 2000 study by the University of Texas showed that most people oppose this funding concept. (*Civic.com*, “Is it Over for Transaction Fees? March 2001, p. 24).

- * Allow **Web advertising** on your communities Internet homepage.

“Advertising may be the stickiest financing issue—and the one with the trickiest ramifications. But the other approaches come with their idiosyncratic ups and downs as well” (*Governing*, “No Free Lunch Online,” August 2000, p. 29). Concerns with advertising involve a perceived government endorsement of those companies which advertise. These businesses may compete with home town businesses or may be seen as products or messages that government should not promote (e.g., tobacco, birth control information, alcoholic beverages).

Convenience or transaction fees also have their problems. They are basically charged for two reasons. First, is when private companies provide all of the software to establish the online system and they recoup their costs by charging and keeping the fee. Second, is when the charge is imposed in order to pay the credit card companies' surcharges for use of the credit card (usually 2 to 3%). (*Civic.com*, “Is it Over for Transaction Fees? March 2001, p. 24).

The first reason can provide a powerful incentive to get up and running quickly. “In general, places with fewer resources, smaller staffs and less money tend to bring in companies who set them up in exchange for transaction fees.” (“No Free Lunch Online,” *supra*, p. 30).

Such fees have been criticized for practical as well as philosophical reasons. Such fees discourage use. When Arizona began allowing vehicle registration renewal online in November 1997 they tacked on a transaction fee of \$6.95. Only 2,700 people used it in the first month. Ten months later, after 256,000 renewal notices were sent out, only 5,500 people renewed

electronically. Most of the complaints in the comment section of the homepage were regarding the fee. In October 1998, Arizona dropped the fee and the renewals immediately increased to 13,000. As of a December 2000, 42,755 renewed by phone or online.

California had the same experience when it imposed a \$4 transaction fee to cover the credit card costs for vehicle registration renewals. There were 22,000 renewals per month without the fee but when it was imposed in July 2000, usage dropped to 17,000. (“Is it Over for Transaction Fees,” *supra*, p. 24).

As noted by *Governing* magazine, “Although charging users a transaction fee has become an increasingly prevalent method of ‘self funding’ Web-based services, it is not necessarily the best nor the all-purpose solution to financing government-to-constituent e-commerce sites.” (“No Free Lunch Online,” *supra*, p. 28).

If the reason for the fee is the second one, i.e., to off-set the credit card fee, some governments have eliminated this cost by not charging the fee when a debit card is used or when a direct transfer from a checking account is done.

Some argue that convenience fees are counterproductive because when people apply or renew online they are ultimately saving the government money. They are doing all of the data entry for you. The airlines understand this cost savings. Not only do they not have a transaction fee but they actually give discounts to those who use the Internet. The state of Virginia is one of the few, if not the only state, that gives a discount for online renewal of driver’s licenses. Virginia’s DMV Commissioner, Richard Holcomb explained that “Virginia offered the discounts because it cost only \$2 to process a transaction online, by phone, by fax and by mail as opposed to \$5 to process a transaction face to face” (“Is it Over for Transaction Fees?” *supra*, p.26).

In an August 2000 report, “Sizing U.S. eGovernment,” Forrester Research concluded that user-charged, citizen convenience fees will be gone by 2002. (“Is it Over for Transaction Fees?” *supra*, p.25). However, there is an argument that such fees are still appropriate where what is being provided is an “enhanced” service or where the fee is not set too high.

In the licensing context, the enhanced service may be the ability to not only pay the tax or fee but to view their license status 24/7 and see their payment history and the specific regulations that apply to them.

Furthermore, if the convenience fee is kept low enough, it may be worthwhile for the business community to license over the Internet. NIC, a company that sets up online portals for governments (it built and currently operates 12 sites for governments) thinks that California and Arizona had a hard time because their fees were simply too high (\$4 and \$6.25, respectively). NIC usually charges only \$1 to \$2 per transaction. An August 2000 online survey at Indiana’s Internet site showed that the vast majority of users did not mind the transaction fees. (“Is it Over for Transaction Fees,” *supra*, p. 26).

DOOR TO DOOR LEGAL PRIMER

At last years Fort Lauderdale conference Mark Arnold gave a refresher on door to door solicitation. His talk was limited to those situations where:

1. The city or county had enacted an ordinance to regulate such solicitation, specifically including what is commonly referred to as a “Green River Ordinance” which totally bans door to door solicitation, and
2. The ordinance purported to either directly or indirectly restrict constitutionally protected First

Amendment Rights.

Mr. Arnold made it clear that in many states courts have found it lawful for a community to restrict, through its licensing powers, door to door solicitations, even when it may limit the expression of First Amendment rights. However, though the exercise of free speech, religion, etc. can be restricted, the circumstances surrounding any such restriction is narrow. The test sounds simple but is complicated in its application. Truly, it takes a trained professional licensing official to make these kinds of decisions and work with their attorneys to avoid the legal pitfalls.

The test is simply that any licensing restriction on First Amendment rights must be reasonable. From this point on it gets complicated and is usually handled by legal counsel. In order for a door to door licensing restriction of constitutional rights to be reasonable it must meet the following criteria.

1. It must be content neutral as to the message of the speech. You are not taking sides or deciding which messages are good or bad.
2. There must exist a legitimate governmental interest in regulating the speech and or conduct.
3. There must exist ample alternative channels of communicating the speech.
4. The ordinance must be narrowly drawn.

Each one of the above tests must be met by the ordinance. If they are met, then the ordinance is said to be reasonable and will be upheld by the courts. Each licensing official must also realize that exactly what each of the sub-tests means may differ depending upon

which Federal District or Circuit Court the official is located in. It should also be noted that each states' constitution may provide for additional protection.

Regulation of door to door solicitation may be a worthy goal. Crimes may be committed by supposed solicitors and at the very least, inconvenience is often experienced. The challenge however is to regulate such activity so as to maintain the rights of both the solicitor and the home owner.

2001 CONFERENCE IN SAN DIEGO UPDATE

A great convention is in store for those able to attend the upcoming conference in San Diego. There is still time to register if you haven't done so already. Please make your hotel reservations soon. After *NBBLO* negotiated the great hotel rate at the Wyndham, a city-wide convention was scheduled for the same time we are there. When our allotment of \$99/night rooms are gone, the hotel will be charging \$289. Our allotment of rooms for the weekend are already gone but rooms are still available for July 17-19. The weekend charge is now \$308. If you plan to stay the weekend an alternative is to stay at the Radisson Harbor View. It is about 6 blocks from the Wyndham (a 10 minute walk) and we negotiated a rate of \$119/night plus tax. That is the cheapest rate in town. The hotels committed to the city-wide convention that they would not charge lower than \$119.

If the first article in this newsletter wet your appetite for information regarding licensing automation you will be particularly interested in the Wednesday afternoon-Thursday morning presentations. This is a one-of-a-kind opportunity to see four different programs and how four different cities use them: Culver City, California and HdL Business License System;

Denver, Colorado and Municipal Software's City View; Bowling Green, Kentucky and KVS's Business Occupational License and Taxation software; and, Henderson, Nevada and KIVA Development Management software.

WHEN A LICENSE IS NOT PROPERTY

The United States Supreme Court recently dealt with the issue of when a municipal or state business license may constitute property. It concluded that a license is not property in the hands of the government. It can only become property after it is issued.

Louisiana law allows the state to issue nontransferable, annually renewable licenses to operate video poker machines. A licensee was charged under federal law on various fraud charges. One of those charges was brought under 18 USC §§ 1341 which prohibits using the mail in making fraudulent representations to obtain property. The issue in this case was whether Louisiana was defrauded of "property" (the poker machine license) because of the misrepresentations in the licensee's application.

"We conclude that permits or licenses of this order do not qualify as "property" within §§1341's compass. It does not suffice, we clarify, that the object of the fraud may become property in the recipient's hands; for purposes of the mail fraud statute, the thing obtained must be property in the hands of the victim. State and municipal licenses in general, and Louisiana's video poker licenses in particular, we hold, do not rank as "property," for purposes of §§ 1341, in the hands of the official licensor." *Cleveland v. United States*, 121 S.Ct. 365, 367 (2000).

When you issue a license you are not giving out property. Your community is exercising its regulatory powers. The fact that once the license is in the hands of the licensee, it may become their property does not mean it is property for the government. The Court also noted that states and municipalities have ample authority to

prosecute people under state law for misrepresentations made in license applications.

"In short, the statute establishes a typical regulatory program. It licenses, subject to certain conditions, engagement in pursuits that private actors may not undertake without official authorization. In this regard, it resembles other licensing schemes long characterized by this Court as exercises of state police powers." *Cleveland* at 371.

What is important to licensing officials is remembering what a business license really is. It is permission for someone to engage in an occupation which could not be undertaken without such authorization. Once applicants receive a license, it may constitute property and may not be taken away without comporting with due process principles.

WHAT'S NEW IN ADULT BUSINESS REGULATION?

Tampa, Florida won its latest battle against Voyeur Dorm, a home in a residential neighborhood in which 6 women lived while 30 cameras send constant pictures to the Internet for subscribers to view. The issue was whether this adult entertainment business violated the city's SOB zoning provisions. The Internet business argued that because no patrons came to the residents, the provisions were inapplicable. The District Court noted that the ordinance did not make customer visits a requirement in order to meet the definition of an adult business.

The justification for special zoning of SOB's is that they may cause secondary effects, e.g., prostitution, drugs, noise in the parking lots, blight, etc. The studies relied on by Tampa did not deal directly with such Internet-based adult businesses.

Nevertheless, the court explained that "The City need not prove that plaintiff's business would likely have the exact same adverse effects on its surroundings as the adult businesses

previously studied. So long as the adult use ordinance affects only categories of businesses reasonably believed to produce at least some of the unwanted secondary effects, the City must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems. *Voyeur Dorm v. City of Tampa*, No. 8:99-cv-2180-T-24F (Nov. 2000).

Regulating Existing SOB's

Regulating existing sexually oriented businesses isn't easy even with lots of resources and political commitment. *Time* magazine (January 15, 2001, p.20) reported that 2 1/2 years after a New York City initiative to close one-third of all adult businesses within one year there were 142 such businesses, only 2 less than there were in 1998.

State Regulation of SOB's

Since the United States Supreme Court decision in *City of Erie v. PAP's A.M.*, last year 22 states have introduced legislation to tighten their adult entertainment laws and at least three states have already passed bills—Delaware, Maine, and Mississippi. Traditionally, we focus on local governments' efforts to regulate such businesses but this flurry of state activity may prove helpful to localities.

Some of the proposed regulations would authorize local bans on nudity, others deal with restricting locations, while a few bills involve state licensing or permitting local regulation. (*ABA Journal*, "X-Rated Regs," January 2001, p. 18).

LICENSING TAXATION SURVEY

Birmingham, Alabama conducted a survey of licensing officials at the 1999 *NBBLO* conference in Charleston. They were interested in gross receipts taxation of manufacturers, printers, and professionals. There were 35 respondents from a variety of states. The results are as follows:

Manufacturers & Printers

	Manufacturers	Printers
Gross Receipts	20	23
Flat Rate	5	5
Other*	8	6
Not Applicable	3	2
Total**	36	36

*Variable factors, fee cap, net profits, % of inventory, regulatory, Machinery and tools, % of product assembled, square footage of space

**One respondent uses both gross receipts and a flat rate so the total respondents is 35, not 36.

Fourteen of the respondents (40%) include freight charges, postage, and shipping and handling in the computation of gross receipts for manufacturers and 15 include it for printers. For 3 communities, it matters whether the freight charges are separately itemized on the invoice and for 2 it matters if the taxpayer marks up freight charges.

With regards to calculating gross receipts based on where the sales occur, for manufacturers 15 include sales outside the jurisdiction, 8 include sales outside of the state, and 8 include worldwide sales. For printing companies, 16 include intrastate, 10 include interstate, and 10 include worldwide sales.

Professional Businesses

For licensing of professional businesses 15 tax based on gross receipts only, 7 charge a flat fee, and 6 charge both. Seven communities either use another means such as net profits or the number of employees to calculate the charge or they exempt professionals from the tax or only require them to file an application but no fee is charged. Of those who charge professionals based on gross receipts 9 charged based on services rendered within the jurisdiction only, 9 included intrastate services and 4 included all gross receipts regardless of where the services were rendered.