



## WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON ALCOHOL BEVERAGES  
ENFORCEMENT

FROM: Melissa Schmidt, Senior Staff Attorney

RE: Items for Consideration Related to Alcohol Consumption at Certain Private Events

DATE: August 15, 2018

The Joint Legislative Council's Study Committee on Alcohol Beverages Enforcement is directed, in part, to examine whether establishments and venues that serve alcohol are properly licensed under ch. 125, Stats., the Alcohol Beverages Chapter. At the Study Committee's meeting on July 25, 2018, Chair Swearingen requested options for committee consideration related to certain event venues that do not hold a license to sell alcohol beverages to consumers. The specific event venues described include unlicensed venues that are rented for purposes of hosting a private event where alcohol may be consumed.

This memorandum provides members of the Study Committee with background information regarding alcohol consumption at private events located at unlicensed event venues, as well as items for the committee's consideration as it discusses this topic. The list of discussion items is not intended to be an exhaustive list; it is intended to serve as a general framework for committee discussion.

### **BACKGROUND**

Current law generally prohibits an owner, lessee, or person in charge of a "public place" from permitting the consumption of alcohol beverages on the premises of the public place unless the person has an appropriate retail license or permit. The statutes expressly state that this prohibition does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges at the place and time an event sponsored by the private college is being held, churches, premises in a state fair park, or clubs. This prohibition also does not apply to the consumption of fermented malt beverages (beer) on commercial quadricycles, except in municipalities that have adopted ordinances prohibiting this activity. [s. 125.09 (1), Stats.; and Department of Revenue (DOR),

*Alcohol Beverage Laws for Retailers Licenses, FAQ 1,*  
<https://www.revenue.wi.gov/Pages/FAQS/ise-atlicns.aspx#licns1> (January 10, 2018).]

Current law does not, however, define the term “public place” for purposes of the prohibition of consumption of alcohol beverages described above. In an email message to Legislative Council staff from Tyler Quam, DOR, dated January 23, 2018, Mr. Quam explained DOR’s guidance on the term “public place” for purposes of this prohibition:

While “public place” is not defined within statute, the department has researched this issue extensively. Rather than focusing on the location of a particular event, the department considers the nature of the event when determining whether a location is a “public place.” Events such as wedding receptions, birthday parties, employee appreciation events, family reunions, etc., where attendees consist only of personally invited guests known to the host and are not open to the general public, do not qualify as public places. As long as alcohol beverages are not sold, either directly or indirectly, at these types of gatherings, an alcohol beverage license is not required. This is consistent with previous opinions and court cases from around the country.<sup>1</sup> (Emphasis added.)

Under DOR’s interpretation of the term “public place,” whether an event venue is required to obtain an alcohol beverages retail license to sell alcohol for consumption at the venue depends upon the nature of the event hosted at the venue. Specifically, DOR considers whether the event is limited to personally invited guests known to the host and not open to the general public.

One recent example of a legislative attempt to require that an event venue obtain an alcohol beverages retail license, regardless of whether the event was limited to personally invited guests known to the host, is Substitute Amendment 1 to 2017 Assembly Bill 433, related to closing hours for retail sales by wineries. Among other things, the substitute amendment would have prohibited the owner or person in charge of property that is not a public place from permitting the consumption of alcohol beverages on the property if the owner or person in charge of the property received payment for temporary use of the property by another person for a specific event, unless the person had an appropriate retail license or permit and the consumption of alcohol beverages occurred on that portion of the property covered by the retail license or permit.

---

<sup>1</sup> DOR relies upon the 1992 Wisconsin Attorney General opinion 80 Op. Att’y Gen. Wis. 218. The agency also relies upon the following court opinions from Alabama, Illinois, and Texas: *Clarke v. State*, 12 Ala. 492 (1847); *Campbell et al., v. State*, 17 Ala. 369 (1850); *Roquemore v. State*, 19 Ala. 528 (1851); *People v. Simcox et al.*, 379 Ill. 347 (1942); *White v. State*, 39 Tex. Crim. 269 (1898); and *Austin v. State*, 57 Tex. Crim. 623 (1910).

## ITEMS FOR COMMITTEE CONSIDERATION

If the committee is interested in recommending that certain event venues must obtain an alcohol beverages retail license before alcohol beverages may be consumed on the event venue's property, the committee could consider the following items relevant to that decision:

- Defining the term "event venue." The committee could consider certain qualities that the event venue must have, such as:
  - The size of events, or occupancy, that the venue is able to accommodate.
  - The annual number of events held at the venue.
  - The relationship of the owner or person in charge of the property to the event host, such as a familial relationship.
  - The type of venues (e.g., warehouses, agricultural event venues, historical homes, etc.) that are included or excluded from the definition.
  - Whether the event venue must obtain an alcohol beverages retail license for purposes of renting property for certain types of events, such as a tailgate.
- Specifying whether the property owner or person in charge of an unlicensed event venue may allow alcohol beverages to be consumed at an unlicensed event venue if the host purchased the alcohol from a caterer holding a retail license and the alcohol is delivered and poured by the licensed caterer.

Alternatively, the committee could seek no change to current law or recommend that the law be clarified in a way that is consistent with current DOR guidance.

MS:ksm