



## WISCONSIN LEGISLATIVE COUNCIL

# MEETING MINUTES

## STUDY COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT

Room 411 South  
State Capitol  
Madison, WI

August 22, 2018  
10:00 a.m. – 4:25 p.m.

### Call to Order and Roll Call

Chair Swearingen called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Rob Swearingen, Chair; Sen. Daniel Feyen, Vice Chair; Rep. JoCasta Zamarripa; Sen. LaTonya Johnson; and Public Members Joe Bartolotta, Sarah Botham, Angie Bowe, Andrew Bowman, William Glass, Evan Hughes, Roger Johnson, Paul Lucas, John Macy, Pete Madland, and Mike Wittenwyler.

COUNCIL STAFF PRESENT: Melissa Schmidt and Mike Queensland, Senior Staff Attorneys.

APPEARANCES: Claire Silverman, Legal Counsel, League of Wisconsin Municipalities (LWM) and Carol Nawrocki, Attorney and Assistant Director, Wisconsin Towns Association (WTA); Michael D. Madigan, Attorney and Managing Shareholder, Madigan, Dahl & Harlan, P.A.; Abigail C.S. Potts, Assistant Attorney General, Wisconsin Department of Justice (DOJ); Steve Nagy, Owner, Homestead Meadows Farm; John Govin, Owner, The Weddin' Barn; Pam Pennington, Owner, Bridle Barn and Gardens; Sara Haase, Owner, Croix-View Farm LLC; Jean Bahn, Owner, Farmview Event Barn; Mary Telfer, Owner, The Gathering Barn; Bonnie Keys, Owner, Mulberry Lane Farm; Todd Verboomen, Ray Pethan, and Paul Cummings, Valley Liquor; Tim Otterstatter,

Owner, The Hay Loft Barn; Ryan Kratky, Owner, Over the Vines; and Carrie Tryba, Owner, Simply Country Barn.

### **Approval of the Minutes of the July 25, 2018 Meeting of the Study Committee**

*Mr. Lucas moved, seconded by Mr. Bartolotta, that the minutes of the committee's July 25, 2018 meeting be approved. The motion was approved by unanimous consent.*

### **Presentation on Enforcement of Alcohol Beverages by Local Units of Government**

Carol Nawrocki, Assistant Director for WTA, and Claire Silverman, Legal Counsel for LWM, presented on issues relevant to local enforcement of alcohol beverages laws. According to Ms. Nawrocki, WTA has 1,248 town members and 21 village members. Ms. Silverman added that LWM has 189 member cities and 403 village members.

Ms. Nawrocki provided an overview of the role that local officials in towns, villages, and cities ("municipalities") play in alcohol beverages regulation and enforcement. She described how municipal clerks handle alcohol beverages retail license applications and shared that most municipal clerks have no prior background dealing with alcohol beverages laws. As a result, Ms. Nawrocki noted that a key role for WTA, and her specifically, is to educate local officials about alcohol beverages regulation and provide legal information that can assist local officials in performing their duties.

Ms. Nawrocki then described how she and town officials interact with the Department of Revenue (DOR). She stated that enforcement matters are typically handled by the local sheriff's department and interactions with DOR usually occur when novel questions arise. She stated that when she contacts DOR, in most cases she speaks with Tom Ourada. She stated that Mr. Ourada has been very responsive and helpful. However, Ms. Nawrocki indicated that after Public Member Roger Johnson retired from DOR, DOR has been less proactive in sharing information about its answers to alcohol beverages questions and its responses do not always appear to be consistent.

Regarding the legality of certain "wedding barn" operations and whether a winery may hold a Class "B" retail license to sell beer, Ms. Nawrocki stated that DOR has had difficulty communicating its interpretation of the law. As it pertains to wedding barns, Ms. Nawrocki noted that DOR's answers appear to be inconsistent with information provided by the department in the past. She said that the lack of any written guidance from DOR makes it more difficult for town officials to perform their duties.

Ms. Nawrocki stated that the issue of whether a winery may be issued a license to retail sell beer has been especially challenging for local officials. She stated that interpretations taken by DOR and DOJ raise many practical questions that necessitate more guidance. While DOR has not issued formal guidance on this topic, she noted that she obtained correspondence from a DOR agent to an attorney for a winery. However, in her opinion, this correspondence did not appear to be consistent with the other guidance issued from DOR or DOJ.

In sum, Ms. Nawrocki noted that town officials would benefit from more guidance from DOR on alcohol beverages regulation and that returning to an approach that entailed greater outreach and collaboration would be beneficial as well.

Ms. Silverman described how LWM educates local officials on alcohol beverages laws and serves as a resource for its members on many issues. Ms. Silverman stated that she authors a LWM publication on alcohol beverages regulation for local officials that was once a DOR publication.

Ms. Silverman echoed Ms. Nawrocki's comments regarding interactions with DOR. According to Ms. Silverman, she frequently contacts Mr. Ourada on alcohol beverages issues and she finds him to be very prompt and helpful. While she has no complaints about her interactions with DOR, Ms. Silverman noted that the department is less collaborative than it has been in the past.

In response to a question from committee members, Ms. Silverman and Ms. Nawrocki stated that it is their interpretation that alcohol sales are generally prohibited unless specifically allowed by statute.

**Presentation on Constitutional Law Related to Alcohol Beverages Regulations by  
Michael D. Madigan, Attorney and Managing Shareholder, Madigan, Dahl &  
Harlan, P.A.**

Attorney Michael Madigan presented information to the committee on constitutional law issues related to alcohol beverages regulations. A link to Mr. Madigan's PowerPoint presentation and an article he recently authored, *Competition v. Control*, Mitchell Hamline Law Review, April 2018, may be found on the committee's website: <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>.

Mr. Madigan began his presentation with background information about the reasons for regulating alcohol beverages and the two pillars for this regulation, the three-tier system, and tied-house laws. In his opinion, these laws have created greater consumer choice while assuring product safety and protecting public health.

Mr. Madigan then described constitutional limits on state alcohol beverages regulation. He specifically noted a conflict between two constitutional doctrines, the Twenty-first Amendment and the Dormant Commerce Clause. He then summarized that: (1) "laws which facially discriminate against out-of-state entities in favor of in-state entities, which burden the former and benefit the latter, are per se invalid"; and (2) "laws which discriminate against out-of-state entities in purpose or effect are also per se invalid."

Following Mr. Madigan's presentation, Chair Swearingen noted that DOR is having difficulty enforcing laws regarding the shipment of alcohol beverages into Wisconsin directly to consumers from out-of-state. He stated that it is his intention to look more closely at this issue at future committee meetings.

**Presentation on the Informal Attorney General Opinion Regarding Retail Licenses Issued to Wineries and Breweries by Abigail C.S. Potts, Assistant Attorney General, Wisconsin DOJ**

Assistant Attorney General Abigail Potts presented on an informal attorney general (AG) opinion issued to DOR regarding retail licenses issued to wineries and breweries. Ms. Potts was a part of the team that drafted the informal AG opinion. The conclusion of this communication is the following:

Our informal opinion is that municipalities may issue Class “B” beer licenses to wineries and as long as the winery complies with the separate doorway requirement in [s. 125.32 (3m), Stats.] and may issue “Class C” [wine-only] licenses to eligible breweries. [Opinion of Wis. Asst. Att’y Gen. David V. Meany to Ms. Dana Erlandsen, Chief Legal Counsel, DOR, ¶1 (Feb. 22, 2017), available on the committee website at: <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>.]

Ms. Potts stated that the informal AG opinion is not a policy statement, but is rather an interpretation of the law provided to a client agency, DOR. According to Ms. Potts, the question posed to DOJ was whether select statutes preclude the issuance of a Class “B” beer license to a winery and a “Class C” wine-only license to a brewery. Chair Swearingen asked Ms. Potts whether DOJ had an opinion on whether a winery may hold a license to retail sell beer or whether a brewery may retail sell wine. Ms. Potts responded that DOJ had no opinion on those questions.

In response to several questions from Mr. Wittenwyler, Ms. Potts stated that she was not prepared to speak about: DOJ’s alcohol beverages enforcement authority; whether DOJ had dedicated any staff to alcohol beverages enforcement; or whether DOJ has taken steps to stop the illegal interstate shipment of alcohol beverages into Wisconsin.

**Presentation on Agricultural Event Venues by Representatives of the Wisconsin Agricultural Tourism Association (WATA), Including Owners of Agricultural Event Venues**

**Steve Nagy, Board Member, WATA and Owner, Homestead Meadow Farms; John Govin, Owner, The Weddin’ Barn; Pam Pennington, Owner, Bridle Barn and Gardens; Sara Haase, Owner, Croix-View Farm LLC; Jean Bahn, Owner, Farmview Event Barn; Mary Telfer, Owner, The Gathering Barn; Bonnie Keys, Owner, Mulberry Lane Farm; and Todd Verboomen, Ray Pethan, and Paul Cummings, Valley Liquor**

Members of the WATA presented on alcohol beverages regulations as they pertain to agricultural event venues. This presentation was led by Steve Nagy, a WATA board member and owner of Homestead Meadows Farms. A link to WATA’s PowerPoint presentation may be found on the committee’s website: <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>.

The WATA members explained how each of them operate venues used for private events that are not licensed under ch. 125, Stats., the Alcohol Beverages Chapter. Each member described how he or she formed an agricultural event venue business and the steps that each takes to ensure public safety. Common themes that emerged during this presentation include: (1) the importance of these businesses to Wisconsin's farm economy; (2) the steps taken by venues to comply with various zoning, building code, and alcohol beverages laws; and (3) the desire of these owners to avoid being regulated as a tavern. Each of the owners indicated that they only rent their venues for "private events" and that they played no part in acquiring or serving alcohol at these events.

Todd Verboomen described how catering to unlicensed event venues, such as the ones operated by WATA member presenters, is a key part of Valley Liquor's business model. In response to a question, Ray Pethan stated that Valley Liquor sells alcohol to the person renting the agricultural event venue and in some cases provides licensed bartenders to serve alcohol at the event. In all cases, Mr. Pethan explained, once a sale has taken place the alcohol beverages purchaser may not return the product.

Committee members raised several concerns about alcohol being served at unlicensed event venues, including: (1) fairness to other businesses that must comply with additional regulations and restraints, such as taverns and wineries; (2) public safety; and (3) whether private events are truly private. Committee members also questioned whether the agricultural event venues profiled by this panel were representative of the agricultural event venues being operated throughout the state.

## **Presentation on Agricultural Event Venues by Owners of Agricultural Event Venues**

### **Tim Otterstatter, Owner, The Hay Loft Barn**

Tim Otterstatter explained that he holds retail alcohol beverages licenses for the agricultural event venue he operates. During his presentation, he described the process he went through to start his business. Much of the work he completed on his venue was to comply with commercial building code requirements, which he stated were more stringent for him than for other event venues that began operation in Jefferson County before him.

Mr. Otterstatter stated that the top question he receives from potential clients relate to his alcohol policy. Mr. Otterstatter elaborated that he loses business to other event venues that do not have an alcohol beverages license. However, he stated that he continues to hold an alcohol beverages license because he believes that the intention of Wisconsin's alcohol beverages laws are that he is required to be licensed to have alcohol served at events held on his property.

### **Ryan and Billie Marie Kratky, Owner, Over the Vines**

Ryan and Billie Marie Kratky hold retail alcohol beverages licenses for the agricultural event venue they operate. Mr. Kratky stated that their operation is at a competitive disadvantage compared to other competitors, but that the decision to be a licensed venue to provide a safe environment was more important. He also noted that the closing hours restrictions that apply to wineries, 9:00 p.m., was the reason that he and Billie Marie decided to open an agricultural event venue, rather than a winery.

### **Carrie Tryba, Owner, Simply Country Barn**

Carrie Tryba holds retail alcohol beverages licenses for the agricultural event venue she operates. She stated that she does not think other event venue operators understand the risks of having alcohol served at their venues without having an alcohol beverages license. She described her concern for guest safety, fairness to other business operators, and unknowing consumers.

### **Description of Materials Distributed**

Due to time constraints, Chair Swearingen stated that the committee would discuss the bill drafts and Legislative Council memorandum distributed to the committee at the next committee meeting.

### **Discussion of Committee Assignment**

Chair Swearingen announced that DOR will testify at the next meeting about its plans to address committee members' concerns regarding alcohol beverages enforcement. In addition, Chair Swearingen stated that he will be inviting a speaker to present to the committee about the enforcement of collecting taxes on the internet sales of alcohol beverages. Chair Swearingen also requested Legislative Council staff to develop options for the committee to discuss regarding unlicensed venues.

Mr. Wittenwyler displayed examples of numerous online purchases of wine, as well as beer and distilled spirits, where the seller did not collect any tax. He also described his frustration with DOR's response to his requests to address this issue.

### **Other Business**

There was no other business brought before the committee.

### **Plans for Future Meetings**

The next meeting of the committee is scheduled to be held on Wednesday, September 26, 2018. Chair Swearingen plans on holding subsequent meetings after the November general election.

### **Adjournment**

The committee adjourned at 4:25 p.m.

[The preceding is a summary of the August 22, 2018, meeting of the Study Committee on Alcohol Beverages Enforcement, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]