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PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Ms. Dana Erlandsen
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Wisconsin Department of Revenue
2135 Rimrock Road, 6-173
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Madison, WI 53708

Dear Dana:

¶ 1. In a letter dated November 25, 2015, and designated by you as a privileged attorney-client communication, you have requested an informal opinion from the Department of Justice regarding two questions: (1) Whether Wisconsin statutes permit municipalities to issue a Class “B” beer license to a winery, pursuant to Wis. Stat. § 125.26(2)(a), or whether such licenses are barred by Wis. Stat. §§ 125.32(3m) and 125.69; and (2) Whether municipalities can issue “Class C” intoxicating liquor licenses to breweries, pursuant to Wis. Stat. § 125.51(1)(a) and (3m), or whether issuance is barred by Wis. Stat. § 125.29(3)(h). Our informal opinion is that municipalities may issue Class “B” beer licenses to wineries as long as the winery complies with the separate doorway requirement in Wis. Stat. § 125.32(3m), and may issue “Class C” intoxicating liquor licenses to eligible breweries.

QUESTION ONE

¶ 2. Municipalities are responsible for issuing licenses for the sale of fermented malt beverages (hereinafter, “beer”) or intoxicating liquors including wine. See Wis. Stat. §§ 125.02(9), 125.26(1), 125.51(1). Beer licenses are governed by Subchapter II of Wis. Stat. Chapter 125 (Sections 125.25-125.34); intoxicating liquor licenses are governed by Subchapter III (Sections 125.51-125.70). The Department of Revenue is responsible for issuing brewery and winery permits. See Wis. Stat. §§ 125.02(13), 125.29(1), 125.53(1). Chapter 125 differentiates between beer and

liquor licenses by the placement of quotation marks. Thus, a beer license is either Class "A" or Class "B"; a liquor license is either "Class A," "Class B," or "Class C." See Wis. Stat. §§ 125.04(3)(g), 125.05(1)(a), 125.07(3)(a)6.

¶ 3. Analysis of your question begins with the type of entities to whom a Class "B" license may be issued. A Class "B" license "authorizes retail sales of fermented malt beverages to be consumed either on the premises where sold or off the premises." Wis. Stat. § 125.26(1). The statute specifies the persons to whom a Class "B" license may be issued.

(a) Class "B" licenses may be issued to any person qualified under s. 125.04 (5). Such licenses may not be issued to any person acting as agent for or in the employ of another except that this restriction does not apply to a hotel or restaurant which is not a part of or located on the premises of any mercantile establishment, or to a bona fide club, society or lodge that has been in existence for at least 6 months before the date of application. A Class "B" license for a hotel, restaurant, club, society or lodge may be issued in the name of an officer who shall be personally responsible for compliance with this chapter.

(b) 1. Except as provided in s. 125.295, Class "B" licenses may not be issued to brewers or brewpubs.

2. A Class "B" license may not be issued to a person holding a wholesaler's permit issued under s. 125.28 or to a person who has a direct or indirect ownership interest in a premises operating under a wholesaler's permit issued under s. 125.28.

Wis. Stat. § 125.26(2).

¶ 4. You ask whether a winery is included among those who can obtain a Class "B" license. A winery is an establishment that manufactures and bottles wine on its premises. Wis. Stat. § 125.53(1). Wisconsin Stat. § 125.26 does not expressly state whether or not a winery may obtain a Class "B" license. On its face, the provision thus does not bar a winery from Class "B" licensure as long as it is qualified under Wis. Stat. § 125.04(5). You ask whether wineries might nevertheless be barred from acquiring a Class "B" license by Wis. Stat. §§ 125.32(3m) or 125.69. Addressing these two provisions in turn, we conclude that Wis. Stat. § 125.32(3m) bars wineries from obtaining a Class "B" license unless they comply with the secondary doorway

requirement in the statute, but Wis. Stat. § 125.69 does not preclude a winery from obtaining a Class “B” license.

¶ 5. Wisconsin Stat. § 125.32(3m) limits the types of business that may be conducted on premises where beer is consumed:

No Class “B” license or permit may be granted for any premises *where any other business is conducted* in connection with the premises, except that this restriction does not apply if the premises for which the Class “B” license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class “B” premises. No other business may be conducted on premises operating under a Class “B” license or permit.

The statute also lists a number of exceptions to that limitation:

These restrictions do not apply to any of the following:

- (a) A hotel.
- (b) A restaurant, whether or not it is a part of or located in any mercantile establishment.
- (c) A combination grocery store and tavern.
- (d) A combination sporting goods store and tavern in towns, villages and 4th class cities.
- (e) A combination novelty store and tavern.
- (f) A bowling center or recreation premises.
- (g) A club, society or lodge that has been in existence for 6 months or more prior to the date of filing application for the Class “B” license or permit.
- (h) A movie theater.
- (i) A painting studio.
- (j) Premises for which a temporary Class “B” license is issued under s. 125.26 (6) if the license is one of multiple licenses issued by the municipality to the same licensee for the same date and times, the licensee is the sponsor of an event held at multiple locations within the municipality on this date and at these times, and an admission fee is charged for participation in the event and no additional fee is charged for service of alcohol at the event.

Wis. Stat. § 125.32(3m). Whether a winery is a type of “other business” within the meaning of this provision is a question of statutory construction.

¶ 6. The goal in statutory interpretation is to discern the intent of the legislature, which we derive primarily by looking at the plain meaning of the statute. *Wis. Citizens Concerned for Cranes & Doves v. Wis. Dep’t of Nat. Res.*, 2004 WI 40, ¶ 6, 270 Wis. 2d 318, 677 N.W.2d 612. The language of a statutory provision is read in relation to the entire statute so as to avoid an absurd result. A basic principle of statutory construction is that “the meaning of a particular section of the statute must be derived from consideration of the act or statute as a whole.” *State v. Wachsmuth*, 73 Wis. 2d 318, 323, 243 N.W.2d 410 (1976).

¶ 7. Applying these principles, we conclude from the wording of this provision, and related provisions in Chapter 125, that the legislature intended for “other business” to include manufacturing wine.

¶ 8. Wisconsin Stat. § 125.32(3m) generally states that no “other business” can be conducted on premises with Class “B” licenses. There are enumerated exceptions to that general rule, but wineries are not among the exceptions. One might argue that the types of establishments listed in the exceptions suggest that the intent of the statute is to prohibit Class “B” businesses from mixing with businesses that do not otherwise serve alcoholic beverages. Hotels, restaurants, and a “combination grocery store and tavern” are all venues where the customer might expect alcoholic beverages to be served; these businesses may obtain Class “B” licenses. But the legislature expressly enumerated exceptions to the restrictions in Wis. Stat. § 125.32(3m), and chose not to include wineries.

¶ 9. For other businesses not excepted in Wis. Stat. § 125.32(3m), an entity may still obtain a Class “B” license if it has a separate doorway for that other business. A winery may thus obtain a Class “B” license if it complies with the secondary doorway requirement in the statute.

¶ 10. You also ask whether, apart from Wis. Stat. § 125.32(3m), Wis. Stat. § 125.69 bars wineries from obtaining a Class “B” beer license. Wisconsin Stat. § 125.69 is entitled “Restrictions on dealings between manufacturers, rectifiers, wholesalers and retailers.” This interest-restriction provision prohibits one from holding both a license and a permit. It states, in pertinent part, that:

No manufacturer, rectifier, winery, or out-of-state shipper permittee, whether located within or without this state, may hold any direct or indirect interest in any wholesale permit or establishment. Except as provided in pars. (a) and (b) 4. and s. 125.53, no retail licensee may hold any direct or indirect interest in any manufacturer, rectifier, winery, or out-of-state shipper permittee.

Wis. Stat. § 125.69(1)(c).

¶ 11. The immediate question is whether the provision applies to beer licenses at all. Although subsection (1)(c) of Wis. Stat. § 125.69 does not reference specific licenses, several features of the provision suggest that it does not apply to beer. The provision is located in Subchapter III of Chapter 125, which addresses intoxicating liquor licenses and permits. *See* Wis. Stat. § 125.51 *et seq.* Beer licenses, in contrast, are located in Subchapter II of Chapter 125. *See* Wis. Stat. §§ 125.25-125.34. Subchapter II has its own “Restrictions” sections, Wis. Stat. §§ 125.33 and 125.34, that limit what a licensee under that Subchapter can sell. The location of the interest-restriction provision in Wis. Stat. § 125.69 suggests that it is meant to apply only to licensees under Subchapter III, intoxicating liquor licensees.

¶ 12. The surrounding language of the statute also supports this interpretation. The subsections surrounding Wis. Stat. § 125.69 make repeated references to Subchapter III “Class A,” “Class B,” and “Class C” licenses, but no mention to Subchapter II Class “B” licenses. *See* Wis. Stat. § 125.69(1)(a), (b), and (d). As such, the surrounding language of the statute suggests that Wis. Stat. § 125.69 is meant to apply only to intoxicating liquor licensees.

¶ 14. Given the location of the interest-restriction provision in Wis. Stat. § 125.69 and the language of the statute, we conclude that Wis. Stat. § 125.69(1)(c) does not bar wineries from obtaining a Class “B” beer license. We do, however, also conclude that Wis. Stat. § 125.32(3m) requires wineries to comply with the secondary doorway requirement to obtain a Class “B” license.

QUESTION TWO

¶ 15. Your second question asks whether municipalities can issue “Class C” intoxicating liquor licenses to breweries, pursuant to Wis. Stat. §§ 125.51(1)(a) and (3m), or whether issuance is barred by Wis. Stat. § 125.29(3)(h). We conclude that the latter statute does not bar issuance of “Class C” licenses to breweries.

¶ 16. Wisconsin Stat. § 125.29 governs brewery permitting. Subsection (1) provides that DOR is responsible for issuing permits to brewers. Subsection (3) enumerates the activities authorized by a brewery permit:

AUTHORIZED ACTIVITIES. The department shall issue brewer's permits to eligible applicants authorizing all of the following:

- (a) The manufacture of fermented malt beverages on the brewery premises.
- (b) The bottling, packaging, possession, and storage of fermented malt beverages on the brewery premises.
- (c) The transportation of fermented malt beverages between the brewery premises and any depot or warehouse maintained by the brewer.
- (d) The sale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewery premises, of fermented malt beverages that have been manufactured by the brewer on those premises or on other premises of the brewer.

.....

- (h) Notwithstanding ss. 125.04 (9) and 125.09 (1), the retail sale of intoxicating liquor, for on-premise consumption by individuals at the brewery premises or an off-site retail outlet established by the brewer, if the brewer held, on June 1, 2011, a license or permit authorizing the retail sale of intoxicating liquor and if the intoxicating liquor has been purchased by the brewer from a wholesaler holding a permit under s. 125.54.

Wis. Stat. § 125.29(3)(a)–(d), (h). Wisconsin Stat. § 125.29(3)(h) authorizes certain brewers to sell “intoxicating liquor, for on-premise consumption . . . at the brewery premises or an off-site retail outlet”—those who held a specific license or permit on June 1, 2011. But, importantly, this provision does not restrict what brewers licensed after that date may sell. Rather, it describes only what certain brewers are authorized to sell by virtue of their brewery permits. It does not prohibit other brewers from obtaining additional licenses or permits that might allow the sale of wine.

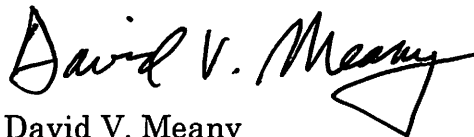
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¶ 17. A “Class C” license “authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.” Wis. Stat. § 125.51(3m)(b). While the resulting license is narrower than the authorization granted in the brewery permit for pre-June 1, 2011, breweries (the “Class C” allows only the sale of wine, whereas the brewery permit allows the sale of “intoxicating liquor”), nothing in the statute suggests that a brewer is statutorily ineligible for a “Class C” license. As long as an individual is otherwise qualified, we conclude that Wis. Stat. § 125.29(3)(h) does not bar a municipality from issuing a “Class C” license to a brewery under Wis. Stat. § 125.51(1)(a) and (3m).

CONCLUSION

¶ 19. In sum, our informal opinion is that municipalities may legally issue Class “B” beer licenses to wineries and “Class C” intoxicating liquor licenses to breweries, respectively, but Wis. Stat. § 125.32(3m) requires wineries to comply with the secondary doorway requirement in the statute in order to obtain a Class “B” license.

Sincerely,



David V. Meany
Administrator
Division of Legal Services

DVM:ACP:jrs:ts