ROB SWEARINGEN

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December 11, 2018

Mr. Richard Chandler
Secretary
Department of Revenue
2135 Rimrock Road
Madison, WI 53713

Dear Secretary Chandler:

I am writing to request an update regarding how the Department of Revenue intends to respond and implement a recent informal opinion that I received from Attorney General Brad D. Schimel on the issue of alcohol beverages consumption at unlicensed event venues. Attached to my letter is the letter from Attorney General Schimel, dated November 16, 2018, which provided his informal opinion on the legality of an unlicensed event venue, such as a wedding barn, that allows the consumption of alcohol beverages at a private event if the event host pays to rent the venue's facilities. As stated in his letter, it is the Attorney General's informal analysis that an event venue is considered a "public place" under s. 125.09 (1), Stats., and thus must hold the applicable retail license in order to allow consumption of alcohol beverages at the event venue.

The crux of the Attorney General's analysis is that event venues that are rented for private events like weddings and are generally open to the public for rent are considered public places under ch. 125, Stats. Specifically:

> A broad "private event" exception cannot be supported by the text of the statute; there is simply no portion of the statute that would support a distinction between a public place that hosts an event open to all the public, and a public place that may be rented out for a limited private event. The "place," in both circumstances is "public" in my view.
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> [Letter from Attorney General Brad D. Schimel to Representative Rob Swearingen, State Assembly (November 16, 2018), p. 2-3.]

The result of the Attorney General's informal opinion is that event venues must generally obtain the appropriate alcohol beverages retail license or permit, unless a specific statutory exceptions applies. His interpretation is consistent with what my view of the law has been all along and addresses many of the concerns that members of the Legislative Council Study Committee on Alcohol Beverages Enforcement have shared.

However, it is important to note that event venues like wedding barns will not be put out of business under this interpretation. Many opportunities exist for wedding barns to obtain appropriate licensure to serve alcohol at their events. Wedding barns may obtain Class "B" beer licenses to sell beer. They may also obtain "Class B" liquor retail licenses to sell spirits and wine. Wedding barns that are also restaurants may be eligible for a "Class C" wine-only retail license. It is important to remember that of these three licenses, the quota only applies to the "Class B" liquor retail licenses. Also, if the municipality has issued all of its available "Class B" liquor retail licenses, a wedding barn may still be issued a liquor license above the quota, if for example, it is a full-service restaurant with a seating capacity of 300 or more. In addition, a municipality that does not have a "Class B" liquor retail license available to be issued under its quota should work with any neighboring, contiguous municipality that does have an unissued "Class B" liquor retail licenses so that it may be transferred and issued to the wedding barn.

In order for wedding barn operators to continue operating without interruption, I encourage the department to proactively take steps to ensure that operators become properly licensed. If the department chooses not to adopt the Attorney General's analysis, I predict that many venues currently licensed to retail sell alcohol beverages at weddings and other private parties will choose to not renew their license in order to remain competitive.

The department should consider providing a grace period, allowing venues to continue business operations as they apply for the annual alcohol beverages retail licenses that become effective on July 1st. I also encourage the department to actively assist venues through the licensure process; to provide them with the educational and technical assistance necessary to obtain licensure with their respective municipality. For example, it would be helpful for the department to educate venues regarding the various licensure options available to them. Similarly, the department should consider hosting training sessions on the laws governing alcohol beverages retailers and the steps venues should take to comply with these laws.

Please provide me with an update regarding how the department intends to respond and implement Attorney General Schimel's informal opinion, as well as any additional thoughts you may have on this matter.

Sincerely,

Representative Rob Swearingen
Wisconsin State Assembly 34th District

Attachment

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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November 16, 2018

SENT VIA INTERDEPARTMENTAL MAIL

The Honorable Rob Swearingen
State Representative
Room 123 West, State Capitol

SENT VIA EMAIL

Rob.Swearingen@legis.wisconsin.gov

Re: Your letter of November 8, 2018

Dear Representative Swearingen:

On November 8, 2018, my office received your request for an opinion interpreting Wis. Stat. § 125.09(1). Unfortunately, I am unable to issue a formal opinion, since a request for such an opinion must come directly from one house of the Legislature, or "the senate or assembly committee on organization, or by the head of any department of state government." Wis. Stat. § 165.015(1).

I can offer you, however, my informal analysis of this statute, in the hopes that my analysis may guide future efforts to reform, if necessary, this particular chapter of the Wisconsin Statutes. I should note in particular that this letter is not meant in any way to bind or inhibit the role of the next Attorney General, who is obviously free to disagree with my position.

Under Wis. Stat. § 125.09(1), "[n]o owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit." The term "public place" is not defined. You have asked whether the term "public place" includes an "event venue" that may be rented for a "private event (e.g., a wedding, birthday party, or retirement party)." I assume from your question that these "event venue[s]" are generally open to the public for rent.

Although chapter 125 does not include a definition of "public place," it does provide some textual clues as to the meaning of this phrase. For example, the term "public" itself indicates that the place is generally open and available for public use, including through a contractual relationship such as a rental agreement or lease. *See* Wis. Stat. § 125.09(1) (referring to "lessee"). It is obviously possible for a leased space to host events both open to the general public, and open to only invited guests, yet still remain a public place open to rent. The text of the statute does not indicate that a public place becomes non-public if access is temporarily limited to invited guests, but simply requires that the "owner, lessee or person in charge" obtain a retail license when alcohol beverages are consumed "on the premises." *Id.*

In another place in the statutes, the Legislature similarly chose to define the phrase "[p]ublic place of accommodation or amusement" broadly to include almost all places of business and recreation, including restaurants and hospitals. Wis. Stat. § 106.52(1)(e)1. Given such a broad definition, the Legislature saw it necessary to exclude clubs and private events explicitly from the broad definition within this portion of the public-accommodation statutes. Wis. Stat. § 106.52(1)(e)2.

Section 125.09(1) also provides another textual clue by offering several exceptions to its general retail-license rule, such as "buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges . . . churches, premises in a state fair park or clubs." *Id.* Under the doctrine of *ejusdem generis*, along with the general mandate that "statutory language is interpreted in the context in which it is used," *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110, I interpret the phrase "public place" to mean places similar to those examples listed in the statute, because if the Legislature did not consider these listed places a "public places," then there would be no need for an exception. *See generally Tetra Tech EC, Inc. v. Wis. Dep't of Revenue,* 2018 WI 75, ¶ 101, 382 Wis. 2d 496, 914 N.W.2d 21 (discussing *noscitur a sociis* doctrine); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 31 (2012) (associated-words canon). In other words, but for the exceptions, government-owned buildings, public parks, athletic fields, churches, and clubs would all fall under the definition of a "public place." Some of these categories, such as churches, clubs, and buildings in public parks, are traditionally and regularly used for private events, indicating that if they were not excepted, they would fall under the statute's mandate.

In light of the broad phrase "public place," along with the exceptions that further illuminate the phrase "public place," it is my position that this phrase includes event venues generally open to the public for rent as you describe in your letter. A broad "private event" exception cannot be supported by the text of the statute; there is simply

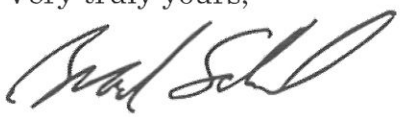
no portion of the statute that would support a distinction between a public place that hosts an event open to all the public, and a public place that may be rented out for a limited private event. The "place," in both circumstances, is "public" in my view.

My conclusion is further supported by an Attorney General opinion from 1992. In this opinion, a prior attorney general considered whether a bed and breakfast may serve alcohol beverages at social events held on the premises. 80 Op. Att'y Gen. 218 (1992). The opinion drew a distinction between a place "visited by many persons and usually accessible to the neighboring public" and a private, personal residence, from which the public is generally excluded. *Id.* at 219 (citation omitted). Applying these factors, the opinion concludes that a "bed and breakfast establishment generally meets the definition of a public place, since the public must have access to the establishment for the purpose of renting or seeking to rent rooms within the establishment." *Id.*

In the same way, for an event venue, as you describe it, the public must have access to the establishment for the purpose of renting or seeking to rent the venue for their event. Regardless of whether the future event is open to the general public, or limited to an invited list of guests, the event venue still retains the overall character of a "public place" in the same way that a bed and breakfast is a "public place."

I understand that my opinion may have policy consequences, such as requiring the Department of Revenue to undertake more enforcement activities. And I also understand that this opinion may call into question whether other locations are "public places" beyond simply the factual circumstance you present. My analysis is purely based on the text of the statute, and not my policy preferences or whether I think the Legislature intended one way or another. Whatever the effect of this opinion, it is the Legislature's choice to alter this language if it is not satisfied with the current text of the statute and its potential implications.

Very truly yours,



Brad D. Schimel
Wisconsin Attorney General

BDS:DPL:alm