



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**BRAD D. SCHIMEL
ATTORNEY GENERAL**

**Paul W. Connell
Deputy Attorney General**

**Delanie M. Breuer
Chief of Staff**

**114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
TTY 1-800-947-3529**

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.

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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

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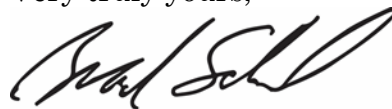
no portion of the statute that would support a distinction between a public place that hosts an event open to all the public, and a public place that may be rented out for a limited private event. The “place,” in both circumstances, is “public” in my view.

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

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