



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON ALCOHOL BEVERAGES ENFORCEMENT

Room 411 South
State Capitol
Madison, WI

July 25, 2018
10:00 a.m. – 3:50 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: Terry Anderson, Director; Melissa Schmidt and Mike Queensland, Senior Staff Attorneys; Parker Conover, Legal Intern, and Kelly Mautz, Support Staff.

APPEARANCES: John Bodnovich, Executive Director, American Beverage Licensees; Richard Chandler, Secretary, Tom Ourada, Excise Tax Specialist, and Tyler Quam, Alcohol and Tobacco Enforcement Unit Supervisor, Department of Revenue (DOR).

Opening Remarks by the Joint Legislative Council

Representative Robert Brooks, Co-Chair, Joint Legislative Council, and Terry Anderson, Director of the Legislative Council staff, welcomed members of the Study Committee and thanked committee members for their service. They remarked upon the history of the Legislative Council and the procedures followed throughout the study committee process.

Introduction and Background of Committee Members

Chair Swearingen introduced himself and welcomed the committee members. Upon the Chair's request, members briefly introduced themselves. Chair Swearingen briefly reviewed the following three items within the scope of the committee's assignment: (1) the structure and staffing of the DOR's enforcement of alcohol beverages laws; (2) venues that allow alcohol beverages to be consumed on their premises without holding the applicable alcohol beverages license; and (3) an informal attorney general (AG) opinion regarding the issuance of Class "B" beer licenses to wineries and "Class C" wine-only licenses to breweries. He also stated that he anticipated the committee would hold three meetings, with the possibility of a fourth meeting.

Presentation by John Bodnovich, Executive Director, American Beverage Licensees

John Bodnovich, Executive Director, American Beverage Licensees (ABL), presented information to the committee on alcohol beverages regulatory structures, specifically the three-tier system of regulation and how it is implemented in various states. A link to Mr. Bodnovich's PowerPoint presentation may be found on the committee's website: <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>.

Mr. Bodnovich began his presentation with a brief history on the three-tier system of alcohol beverage regulation. Then, he identified five common characteristics shared by most states' three-tier systems of regulation: (1) efficient tax collection; (2) prevention of sale to minors; (3) regulation for responsible competition; (4) product safety; and (5) prevention of counterfeit products. Mr. Bodnovich then explained that while these are common characteristics of three-tier systems, they are achieved using different alcohol beverage regulatory structures.

Mr. Bodnovich described various states' alcohol regulatory structures and their purposes. States house their alcohol regulators in various departments. Often, those regulating alcohol are housed in the same department, division, or commission. Some states even have a dedicated alcohol law enforcement branch, bureau or division, for example, the North Carolina Alcohol Law Enforcement (ALE). Mr. Bodnovich noted that with developments in the market, regulation and enforcement is only getting more complicated. With this complication, however, the purpose of alcohol beverage regulations and regulatory structures remains: to achieve normalized and fair enforcement of consensus-driven laws that value public safety and responsible competition within the alcohol beverages industry.

Presentation by Richard Chandler, Secretary, Tom Ourada, Excise Tax Specialist, and Tyler Quam, Alcohol and Tobacco Enforcement Unit Supervisor, DOR

Mr. Richard Chandler, Secretary, DOR, presented information to the committee on DOR's administration of Wisconsin alcohol beverage regulations. Specifically, Secretary Chandler outlined: (1) Wisconsin's three-tier system of regulation; (2) how DOR regulates the three-tier system; and (3) how this system of regulation compares to other states. Secretary Chandler was joined by Tyler Quam, the supervisor of nine excise tax agents in the Alcohol & Tobacco Enforcement Unit of DOR, and Tom Ourada, a technical specialist on excise tax at DOR. A link to Secretary Chandler's PowerPoint presentation may be found on the committee's website: <https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789>.

Secretary Chandler began with a brief overview of Wisconsin's three-tier system of alcohol beverages regulation. He noted that the three-tier system aids in effective collection of taxes and in the prevention of alcohol sales to minors or intoxicated persons. DOR works with local governments to administer and enforce the three-tier system.

Secretary Chandler then presented on the organization of DOR which has multiple offices or units that have specific duties and tasks related to the regulation of alcohol. Specifically, the three parts of DOR that work with alcohol beverages regulations, located within the Division of Income, Sales & Excise Tax, are the following: (1) the Office of Criminal Investigation; (2) the Office of Technical Services; and (3) the Excise Tax Unit. These entities are comprised of tax specialists, enforcement agents, and other specialists. Secretary Chandler noted that these entities work together to apply Wisconsin statutes as they are written. They also work to communicate with the public and to educate the public on compliance with alcohol beverage regulations. Secretary Chandler reported that roughly 90% of inquiries related to alcohol beverages are answered within the same day.

Secretary Chandler also covered alcohol beverages enforcement in other states. He noted that there is variety in how states organize enforcement efforts. Some states have commissions, others have units within existing agencies.

In response to questions regarding the organization of DOR's alcohol beverages enforcement and how staff communicate and interpret the alcohol beverages statutes, Secretary Chandler noted that the alcohol-related staff at DOR meet regularly. He noted that the staff who meet are considered equals, and that they discuss relevant issues to find answers based on consensus. The information from these meetings helps to inform the nine enforcement agents. Secretary Chandler noted that there has not been a recent structural change to DOR's alcohol beverages enforcement. However, the most recent change in staffing was the creation of an alcohol and tobacco enforcement supervisor, who oversees the nine alcohol and tobacco enforcement agents. The current supervisor is Tyler Quam, who is based in Wausau. In response to questions, Secretary Chandler explained that Mr. Quam and the nine enforcement agents are funded by an administrative fee paid by liquor wholesalers. This fee generates roughly \$1.6 million, with roughly \$1.2 million of this revenue expended on enforcement agents and Mr. Quam; the remaining \$400,000 is lapsed into the general fund.

In response to questions regarding changes within DOR's enforcement of alcohol beverages after the retirement of Public Member Roger Johnson, a former DOR employee who was a field agent within DOR's Alcohol & Tobacco Enforcement Unit, Secretary Chandler noted that no structural changes at DOR had occurred since Public Member Johnson retired. Committee members discussed how Public Member Johnson was a field agent located in Madison, who was often perceived as an industry liaison or the person at DOR to call for an answer about alcohol beverages regulations.

Committee members expressed appreciation for DOR's quick response time on most issues. Committee members also noted that there were certain questions for which they were still waiting for an official DOR response, including: (1) whether wedding barn venues must hold an alcohol beverages license in order to allow the consumption of alcohol on their premises at a private event; and (2) how wineries may retail sell beer. Secretary Chandler clarified that the statutes do not require wedding barns to be licensed. He noted that this position precedes

Public Member Johnson's retirement from DOR. Secretary Chandler also noted that wineries can currently serve beer, but that DOR is working on more specific guidelines as to exactly where and how wineries are able to do so.

Description of Materials Distributed

LC Study Committee Memorandum, "Department of Revenue's Statutory Authority and Requirements Related to Wisconsin's Alcohol Beverages Laws" (July 16, 2018)

Melissa Schmidt, Senior Staff Attorney, Legislative Council staff, provided a brief description of LC Study Committee Memorandum, *Department of Revenue's Statutory Authority And Requirements Related to Wisconsin's Alcohol Beverages Laws* (July 16, 2018), which provides an overview of the explicit statutory authority and requirements that DOR has to administer and enforce ch. 125, Stats. (Wisconsin's Alcohol Beverages Chapter).

LC Study Committee Memorandum, "History of Modern State Alcohol Beverages Regulatory Structures and Examples From Neighboring States" (July 17, 2018)

Parker Conover, Legal Intern, Legislative Council staff, provided a brief overview of LC Study Committee Memorandum, *History of Modern State Alcohol Beverages Regulatory Structures and Examples From Neighboring States* (July 17, 2018), which provides the origins of modern state alcohol beverages regulatory structures. He explained that the memorandum includes information regarding the alcohol beverages regulatory structure used by the four neighboring States of Illinois, Minnesota, Iowa, and Michigan, as examples of the different forms states use.

Discussion of Committee Assignment

Structure and Staffing of DOR's Enforcement of Alcohol Beverages Laws

Committee members discussed the structure of DOR's enforcement of Wisconsin's alcohol beverages laws. The committee discussed how staff within the Offices of Criminal Investigation, Technical Services, and the Excise Tax Unit are all within the same Division of Income, Sales & Excise Tax, but that they do not report to the same immediate supervisor. Committee members noted that there is a high level of expertise in the area of alcohol beverages, but that members of the alcohol beverages industry do not necessarily know who to contact for answers to questions.

Committee members also discussed various alcohol beverages enforcement activities that Public Member Johnson used to undertake before he retired from DOR. Committee members discussed how Public Member Johnson was proactive in his engagement with the alcohol beverages industry, participated in national conferences, based in Madison, and a liaison to the alcohol beverages industry. Public Member Johnson explained how the structure of DOR's alcohol beverages enforcement has changed over the years, and that some of his responsibilities dated back to a time prior to the current structure.

Committee members also discussed concerns regarding the complexity of Wisconsin's alcohol beverages chapter and whether the alcohol beverages enforcement would be better improved if the chapter was easier to administer and implement. In response to questions regarding the opportunity to review issues in the alcohol beverages chapter that are a source of

confusion, Chair Swearingen explained that doing so would be outside the scope of the committee.

Based upon committee discussion, Chair Swearingen instructed Legislative Council staff to prepare options for the committee to review regarding the structure of DOR's alcohol beverages enforcement. In doing so, he requested that Legislative Council staff reach out to DOR for their suggestions and to meet with Public Member Johnson for information regarding the activities and responsibilities that he performed and the prior structure of DOR's alcohol beverages enforcement.

Venues That Allow Alcohol Beverages to be Consumed on Their Premises Without Holding the Applicable Alcohol Beverages License

Committee members discussed how alcohol is being consumed at private events that are located at commercial venues, such as wedding barns and warehouses, even though the buildings are not licensed for purposes of consuming alcohol on the premises (unlicensed premises). Committee members also discussed public safety concerns, including concerns that these venues may not satisfy current building code requirements and are not subject to DOR alcohol beverages inspections. Committee members also discussed the fact that in the past, wedding barns were required to obtain an alcohol beverages license, but currently they are not required to do so. Public Member Sarah Botham explained that she has a wedding barn located at her winery, but that she was required to have a license in order for people to consume alcohol at her wedding barn.

Committee members raised concerns that the committee membership does not include an unlicensed wedding barn owner. In response to questions and concerns, Chair Swearingen stated that he was inviting members of the Wisconsin Agricultural Tourism Association to present at the committee's next meeting regarding the issue of whether commercial venues, such as wedding barns, should hold an alcohol beverages license in order to allow the consumption of alcohol on the premises.

Based upon committee discussion, Chair Swearingen instructed Legislative Council staff to prepare options for the committee to review regarding commercial venues, such as wedding barns, allowing alcohol to be consumed without the premises holding the applicable alcohol beverages license.

Informal AG Opinion Regarding the Issuance of Class "B" Beer Licenses to Wineries and "Class C" Wine-Only Licenses to Breweries

Chair Swearingen briefly explained that there is an informal AG opinion written to DOR regarding whether a municipality may issue a Class "B" beer license to a winery or a "Class C" wine-only license to a brewery. Committee members discussed how the informal AG opinion may be read to imply that the alcohol beverages chapter has a six-tier system instead of a three-tier system. Committee members also discussed whether wineries should be able to retail sell beer and breweries should be able to retail sell wine. Public Member William Glass noted that there are breweries that also hold winery permits to produce cider and have obtained "Class C" wine-only licenses to retail sell the cider.

In response to a request that the Department of Justice be invited to present at the committee's next meeting on the informal AG opinion, Chair Swearingen explained that he had invited DOJ to present at the committee's July or August meeting, and that they were unable to attend the committee's July meeting. He stated that he would again extend an invitation to present at the committee's next meeting in August. Chair Swearingen requested that DOR provide a copy of the informal AG opinion to the committee. Public Member Michael Wittenwyler stated that he would provide the committee with a copy of a memorandum responding to the informal AG opinion regarding the issuance of Class "B" licenses issued to wineries and "Class C" wine-only licenses to breweries.

In response to committee discussion, Chair Swearingen instructed Legislative Council staff to prepare options for further consideration by the committee that: (1) codifies the informal AG opinion; and (2) negates the informal AG opinion. Also based upon committee discussion, he instructed that the options reaffirm that the alcohol beverages chapter is a three-tier, not a six-tier, system.

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, August 22, 2018, at 10:00 a.m., Room 411 South, State Capitol. Chair Swearingen also requested that committee members hold September 26, 2018, as a tentative date for the committee's third meeting.

Adjournment

The committee adjourned at 3:50 p.m.

[The preceding is a summary of the July 25, 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>.]

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