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The Honorable Brad D. Schimel
Attorney General
Wisconsin Department of Justice
Room 114 East, State Capitol
P.O. Box 7857
Madison, WI 53707

Subject: Alcohol Consumption at Private Events Located at Event Venues That Do Not Hold an Alcohol Beverages License or Permit

Dear Attorney General Schimel:

Section 125.09 (1), Stats., of Wisconsin's Alcohol Beverages Chapter generally prohibits an owner, lessee, or person in charge of a "public place" from permitting the consumption of alcohol beverages on the premises of the public place unless the person has an appropriate alcohol beverages retail license or permit. This statute also expressly carves out exceptions to this general prohibition. This prohibition does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges at the place and time an event sponsored by the private college is being held, churches, premises in a state fair park, or clubs. This prohibition also does not apply to the consumption of fermented malt beverages (beer) on commercial quadricycles, except in municipalities that have adopted ordinances prohibiting this activity.

Current law, however, does not define the term "public place" for purposes of prohibiting the consumption of alcohol beverages at public places under s. 125.09 (1), Stats. The Department of Revenue (DOR) interprets the term "public place" to be dependent upon the nature of the event. Specifically, it is DOR's interpretation that an event is not a "public place" if it is limited to personally invited guests known to the host and not open to the general public. DOR relies upon the 1992 Wisconsin Attorney General opinion 80 Op. Att'y Gen. Wis. 218 to support its interpretation of the term "public place" for purposes of s. 125.09 (1), Stats. The agency also relies upon the following court opinions from Alabama, Illinois, and Texas: *Clarke v. State*, 12 Ala. 492 (1847); *Campbell et al., v. State*, 17 Ala. 369 (1850); *Roquemore v. State*, 19 Ala. 528 (1851); *People v. Simcox et al.*, 379 Ill. 347 (1942); *White v. State*, 39 Tex. Crim. 269 (1898); and *Austin v. State*, 57 Tex. Crim. 623 (1910).

Acting under DOR's interpretation of the term "public place," event venues throughout the state have offered to rent their facilities to members of the public for the

purpose of hosting invitation-only events such as weddings, retirement parties, and birthday parties. In many instances, the event venue will allow alcohol to be brought onto the property to be consumed by anyone that is personally known and invited by the host, even though there is no alcohol beverages license or permit authorizing on-premise consumption of alcohol at the event venue.

To help provide clarity on these issues, I am requesting an informal opinion regarding the following question:

Under s. 125.09 (1), Stats., may the owner, lessee, or person in charge of an event venue allow the consumption of alcohol beverages at a private event (e.g., a wedding, birthday party, or retirement party) located at the event venue if the host of the event pays to rent the venue's facilities?

It is my interpretation that the answer to this question is no, unless either: (1) there is an alcohol beverages license or permit authorizing on-premise consumption of alcohol; or (2) one of the exceptions to s. 125.09 (1), Stats., applies. I believe that this answer is grounded in the 1992 opinion 80 Op. Att'y Gen. Wis. 218.

Any guidance the Attorney General can provide on the question posed above is greatly appreciated. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Swearingen".

Representative Rob Swearingen
Wisconsin State Assembly
34th District

CC: Deputy Attorney General Paul W. Connell