

CITY OF EAU CLAIRE

Office of the City Attorney

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September 16, 2009

Downtown Eau Claire, Inc. (DECI)
c/o Mike Schatz
PO Box 5148
Eau Claire, WI 54702

Re: Consumption of Alcohol at Businesses

Dear Mr. Schatz:

I was asked by the Water Street BID to provide a legal opinion concerning whether or not a business that has no alcohol license can serve alcohol to the public. I am sharing this information with other business organizations that plan events.

The short answer to the question is “no”. Businesses that are open to the public and have no appropriate alcohol license cannot sell or give away or provide tastings of alcohol, including beer, wine, or spirits, to the public.

Below, I will provide legal support for the answer to the question, with potential penalties for violation of the alcohol laws. I will also provide some brief information as to some alcohol service related laws.

First, an alcohol license is required to serve alcohol beverages. Wis. Stat. s. 125.04(1) states that no person (person includes individuals, corporations, LLC’s, etc.) may sell or engage in any other activity for which this chapter provides a license without holding the appropriate license. The City of Eau Claire forfeiture for violation of this statutory provision is \$452.50. The penalty under state law is a forfeiture of up to \$10,000, nine months in jail, or both (Wis. Stat. s. 125.04 (13)).

Second, if a business does not have an alcohol license, alcohol beverages cannot be sold or given away. Wis. Stat. s. 125.09(1) prohibits “consumption” of alcohol in unlicensed public places. For example, a business at an unlicensed premise cannot have an open house, grand opening, or event that caters to the general public and serves alcohol.

Third, any charge made directly or indirectly for the alcohol beverage requires the person in charge to hold the appropriate license. The term “sale” is broadly defined. “Sale” is a transfer with consideration or transfer without consideration, if made to evade law, or any shift, device, scheme, or transaction for obtaining an alcoholic beverage (Wis. Stat. s. 125.02(20)).

Examples of indirect charges include, but are not limited to, a ticket price including an alcohol beverage, cost of a meal including an alcohol beverage, a purchase of a service with a "free" alcohol beverage, or a donation required in order to consume an alcohol beverage.

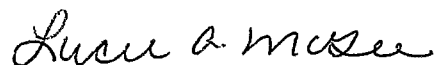
Wis. Stat. s. 125.315 prohibits the "giving" of fermented malt beverages to evade law (i.e., businesses such as credit unions, barbershops, salons, etc., giving away beer to customers without a fermented malt beverage license). Wine and spirits also cannot be given away in the same manner under Wis. Stat. s. 125.67. Again, the penalty under state law is a forfeiture of up to \$10,000, 9 months in jail, or both (Wis. Stat. s. 125.66).

Furthermore, of interest to those serving alcohol are laws pertaining to the service of alcohol. Not only is a license required as explained above, but there are penalties for serving to an underage person, for adults permitting/contributing to underage possession, for selling to intoxicated persons, for allowing an underage person on premise, for no licensed bartender on premise, for no posting of bartender's licenses, and for closing hour violations. Forfeitures for these violations range from \$213.40 to \$452.50 per violation, per day.

Finally, all alcohol must remain on the licensed premise. Although the license holder is not held responsible, a customer who consumes or possesses an open container which contains a fermented malt beverage or intoxicating liquor on the streets, sidewalks, alleys, or boulevards of the city is in violation of city ordinance s. 9.52.030. The forfeiture for this violation is \$213.10.

I hope that you find this information helpful. For more information on alcohol licensing, I recommend the Wisconsin Department of Revenue website (www.dor.state.wi.us) or the City of Eau Claire website (www.eauclairewi.gov).

Sincerely,



Lucie A. McGee
Assistant City Attorney

lmd