

February 10, 2017

[Name]

[Address]

[City, State, ZIP]

RE: *Alcohol Beverage Control Issues*

Dear [Recipient]:

Recently, local law enforcement agencies have fielded increased calls and have responded to area businesses regarding the sale, possession, distribution, and consumption of alcoholic beverages on business premises. Despite several surrounding counties and municipalities voting to go “wet” or “moist”, Crittenden County remains a dry county regarding the possession and use alcoholic beverages.

This office and law enforcement recognize that questions about the legality of certain conduct may arise given the complexity and scope of the law pertaining to alcoholic beverages. As a business that hosts events and/or regularly serves food and drinks, you are receiving this letter as a courtesy notice of what common conduct is prohibited and the potential consequences for violating the law. This letter is not intended to exhaustively review all possible circumstances that may lead to prosecution.

First, **consuming an alcoholic beverage on private property by an individual over 21 years of age is not a crime, even in dry territory.**<sup>1</sup> Therefore, what property is classified as “private” property and what property is “public” property? Under Kentucky law, private property is any property that is not a public place. A public place is defined as a place which is accessible to the public and to which the public is invited.<sup>2</sup> Retail establishments, restaurants, and generally any business open to the public clearly fall under this definition.

Secondly, a private family event such as a wedding is not subject to violation of the alcohol beverage control laws, unless alcohol is sold at a “cash bar” or by other means. However, an otherwise private event becomes a public event if tickets are sold to the public. Dinners, dances, banquets, concerts, special events, etc. where tickets are sold to the public and where alcohol is present on the premises would constitute a violation of alcoholic beverage control laws.<sup>3</sup> **Kentucky law makes no distinction between a for profit event and not for profit event in this regard.**

Therefore, since your business is a “public place” and may host public events, what are the obligations of you, the business owner? The following conduct, **occurring in a public place in a dry territory,** is punishable by law:

- Selling, bartering, loaning, giving, procuring for, or furnishing to another, directly or indirectly any alcoholic beverage.<sup>4</sup>
- Doing any act with respect to the manufacture, storage, sale, purchase, transporting, or other traffic in alcoholic beverages without legal possession of the license authorizing such act.<sup>5</sup>

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<sup>1</sup> *Lewis v. Commonwealth*, 247 S.W. 749 (Ky. 1923)

<sup>2</sup> *Ginter v. Commonwealth*, 262 S.W.2d 178 (Ky. 1953)

<sup>3</sup> Ky. Atty. Gen. Op. No 77-654

<sup>4</sup> KRS 242.230

<sup>5</sup> KRS 242.020

- Permitting any person to sell, barter, loan, give away, or **consume** alcoholic beverages at the place of business.<sup>6</sup>
- Knowingly or intentionally renting or permitting the use of, or using, any premises, or part thereof, or any vehicle for the purpose of unlawfully selling or transporting or possessing alcoholic beverages.<sup>7</sup>
- Permitting any person under the age of twenty-one (21) where alcoholic beverages are being sold or consumed, whether legally or not, to remain on the premises.<sup>8</sup>
- Employing any person under the age of twenty-one (21) where alcoholic beverages are being sold or consumed, whether legally or not.<sup>9</sup>

Clearly, the conduct of others on the premises can subject the business owner, operator, or others associated with the business to criminal liability. Depending on the charge, the punishment can range from a fine only to imprisonment for up to 365 days.<sup>10</sup> Repeated violations may also give rise to a Class D Felony charge.<sup>11</sup> However, there are other considerations beyond just the possibility of criminal charges.

The mere presence of **any quantity** of an alcoholic beverage found on **any business premises** is presumed to be present for the purpose of illegal trafficking.<sup>12</sup> If law enforcement has reason to suspect<sup>13</sup> that illegal alcoholic beverage activities are being conducted, law enforcement is authorized to forcibly enter the premises, seize all alcoholic beverages found, and **immediately arrest** the keeper or person in charge of the premises.<sup>14</sup>

Finally, committing certain violations may result in the **total loss** of your business. After being convicted of certain violations, your business may be subject to forfeiture proceedings.<sup>15</sup> The forfeiture includes not only the property used to commit the violation, but **all** property contained within a single boundary.<sup>16</sup> Thus, although a violation may occur only one part of your premises, **the entirety of your premises may be forfeited to the state.**

Should you have any questions or concerns about your duties and obligations under the law, please consult your own legal counsel.

Sincerely,

Rebecca J. Johnson

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<sup>6</sup> KRS 243.020(3)

<sup>7</sup> KRS 242.310

<sup>8</sup> KRS 244.085(6)

<sup>9</sup> KRS 244.090

<sup>10</sup> See KRS 241.990; KRS 242.990; KRS 243.990; KRS 244.990

<sup>11</sup> *Id.*

<sup>12</sup> KRS 244.160

<sup>13</sup> Only one reputable affidavit is required. See KRS 242.370(1)

<sup>14</sup> KRS 242.370

<sup>15</sup> KRS 242.310

<sup>16</sup> *Id.*