

FARMVIEW EVENT BARN, LLC
N7702 County Road F
Berlin, WI 54923,

GOVIN'S, LLC AND
GOVIN'S MEATS AND BERRIES, LLC
d/b/a THE WEDDIN' BARN
N6134 North 670th Street
Menomonie, WI 54751,

Case No.: 19-CV-

Case Code: 30701

Declaratory Judgment

Plaintiffs,

v.

TONY EVERS, in his official capacity
as Governor of the State of Wisconsin
115 East, State Capitol,
Madison, WI 53702,

PETER BARCA, in his official capacity
as Secretary of the Wisconsin Department of Revenue,
2135 Rimrock Road
Madison, WI 53713,

JOSH KAUL, in his official capacity
as Attorney General of the State of Wisconsin
17 W Main St,
Madison, WI 53703.

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Dunn County Clerk of Circuit Courts, 615 Stokke Parkway, Suite 1500, Menomonie, WI 54751**, and to Wisconsin Institute for Law & Liberty, Plaintiffs' attorney, whose address is: **1139 E. Knapp St., Milwaukee, WI 53202**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 14th day of January, 2019.

WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Plaintiffs

Electronically signed by Richard M. Esenberg

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COMPLAINT

INTRODUCTION

1. Wisconsin law requires a liquor license for the consumption of alcohol in a “public place.” For years, wedding barns, banquet halls, and other private event venues (“Private Event Venues”) have allowed people renting them to bring and consume their own alcohol. Because the events themselves are private and not open to the public, no liquor license is

necessary to consume alcohol. This business model has had the blessing of the Wisconsin Department of Revenue, because a private party at a Private Event Venue is not a “public place.”

2. That business model is at risk now, because state officials have offered an illogical interpretation of state law that relabels Private Event Venues as “public places” and requires them to obtain a liquor license if their renters want to consume alcohol with their guests. Plaintiffs bring this lawsuit seeking a declaratory judgment to resolve this dispute.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff Farmview Event Barn, LLC (“Farmview”) is a domestic limited liability company incorporated under the laws of the State of Wisconsin with a principal place of business located at N7702 County Road F, in the Town of Berlin, County of Green Lake, State of Wisconsin.

4. Plaintiffs Govin’s, LLC and Govin’s Meats and Berries, LLC (collectively, “Govin”), are domestic limited liability companies incorporated under the laws of the State of Wisconsin with a principal place of business located at N6134 670th Street, in the Town of Red Cedar, County of Dunn, State of Wisconsin, doing business as “The Weddin’ Barn.”

5. Defendant Tony Evers is sued in his official capacity as Governor of the State of Wisconsin. Governor Evers’ official address is 115 East, State Capitol, in the City of Madison, County of Dane, State of Wisconsin. Virtually all state agencies, including the Department of Revenue, report to Governor Evers and as the chief executive of the State, he is the appointing authority and supervisor of the leadership at those agencies.

6. Defendant Peter Barca is sued in his official capacity as Secretary of the Wisconsin Department of Revenue.¹ The Department of Revenue (“DOR”) is an administrative agency of the State of Wisconsin. Defendant Peter Barca’s official address is 2135 Rimrock Road, in the City of Madison, County of Dane, State of Wisconsin. DOR is the state agency jointly responsible with the municipalities of this State for administration of Chapter 125, which regulates the sale and consumption of alcohol in Wisconsin. DOR has, for years, interpreted “public place” under Wis. Stat. § 125.09(1) to exclude purely private events where alcohol is consumed, such as the events hosted at the Private Event Venues owned and operated by the Plaintiffs.

7. Defendant Josh Kaul is sued in his official capacity as Attorney General of the State of Wisconsin. Under Wis. Stat. § 125.145 upon request of the DOR Secretary, he may represent the State or assist a district attorney in prosecuting any case arising under Chapter 125. As explained further below, the previous attorney general issued an informal letter to a lawmaker that disagreed with the longstanding DOR interpretation of the meaning of “public place,” which created the significant confusion leading to this suit.

8. This is an action for a declaratory judgment under Wis. Stat. § 806.04. This Court has jurisdiction to hear this case pursuant to Wis. Stat. § 806.04(1), which states that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

9. Section 806.04(2) further states that any person “whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or

¹ On information and belief, Defendant Barca was provisionally appointed as Secretary of the Wisconsin Department of Revenue by Gov. Evers but has not yet been confirmed by the Wisconsin State Senate. Pursuant to Wis. Stat. § 17.20, based on such appointment, Defendant Barca serves as Secretary of the Department of Revenue pending such approval by the Senate.

validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder.”

10. Venue is appropriate in this County under Wis. Stat. § 801.50(3) as the sole defendants are state officers in their official capacity and the Plaintiffs designate this County as the venue.

FACTS

11. Farmview is a Private Event Venue that rents itself out primarily for weddings. Farmview is only open to specifically invited guests for specific private events. Farmview does not have a liquor license and does not sell alcohol, but does allow its renters and their private guests to consume alcohol at private events that are not open to the public.

12. Farmview has weddings booked out into 2020, with many customers intending to bring and consume alcohol with their personally invited guests. Farmview intends to allow the consumption of alcohol on its premises at such events without Farmview holding a liquor license or requiring its customers to do so. Farmview reasonably fears its business will be significantly and negatively impacted by the continued uncertainty in the law.

13. The Weddin’ Barn is a Private Event Venue that rents itself out primarily for weddings. The Weddin’ Barn is only open to specifically invited guests for specific private events. The Weddin’ Barn does not have a liquor license and does not sell alcohol, but does allow its renters and their private guests to consume alcohol at private events that are not open to the public.

14. The Weddin’ Barn has events booked out into 2020, with many customers intending to bring and consume alcohol with their personally invited guests. The Weddin’ Barn intends to allow the consumption of alcohol on its premises at such events without holding a

liquor license or requiring its customers to do so. The Weddin' Barn reasonably fears its business will be significantly and negatively impacted by the continued uncertainty in the law.

15. The Defendants are in charge of administering and enforcing the provisions of Chapter 125 of the Wisconsin Statutes.

16. Wis. Stat. § 125.09(1) requires that the owner, lessee, or person in charge of a “public place” must obtain an appropriate retail license or permit before allowing the consumption of alcohol beverages on the premises.

17. Chapter 125 does not define “public place.”

18. For years, DOR has interpreted “public place” to exclude events where attendees consist only of personally invited guests known to the host, which are not open to the general public.

19. In a January 23, 2018 e-mail exchange, Tyler Quam, Special Agent in Charge of the Alcohol & Tobacco Enforcement Unit at DOR, made clear the DOR’s position that:

Events such as wedding receptions, birthday parties, employee appreciation events, family reunions, etc., where attendees consist only of personally invited guests known to the host and are not open to the general public, do not qualify as public places. As long as alcohol beverages are not sold, either directly or indirectly, at these types of gatherings, an alcohol beverage license is not required.

A copy of this e-mail exchange is attached hereto as Exhibit A.

20. Private Event Venues have relied on the DOR’s interpretation of “public place” in forming their business models. They allow individuals who rent their venues to bring alcohol and consume it with their private guests at their private events without needing to obtain a license or permit under Wis. Stat § 125.09(1).

21. But recent actions at the state level have thrown a cloud of confusion over years of precedent, casting Plaintiffs’ business plans into uncertainty. In addition to the threat to their

businesses, if “public place” under Wis. Stat. § 125.09(1) is determined to mean something different than it has meant for years, then Plaintiffs and all other owners of Private Event Venues will be at risk of criminal prosecution if they continue to operate their businesses as they have for many years.

22. Over the past biennial session of the Legislature, certain lobbying interests attempted to change the law to require that owners of Private Event Venues obtain liquor licenses if alcohol is consumed by private guests at private events hosted on their premises. The purpose of these lobbying attempts was to protect the holders of existing liquor licenses, such as taverns, from perceived competition. The lobbyists attempted to amend the law to expand the licensing and permitting requirements of Wis. Stat. 125.09(1) beyond “public place[s]” to specifically cover “property that is not a public place” – such as the Private Event Venues owned by the Plaintiffs. Those attempts to change the law through the traditional legislative process failed.²

23. On November 16, 2018, at the request of a legislator who is also the past president of the Wisconsin Tavern League (one of the special interests attempting to persuade the Legislature to expand the licensing and permitting requirements in law), then Attorney General Brad Schimel issued an informal letter that disagreed with DOR’s historic interpretation of the meaning of “public place” under Wis. Stat. § 125.09(1). Under the Attorney General’s informal letter, a “public place” includes Private Event Venues because they are available for rent by the public even when the renter or lessee does not make his or her event open to the public. A copy of this informal letter is attached as Exhibit B.

² See Legislative History for 2017 Assembly Bill 433, available at <https://bit.ly/2RnbRLc>; See also LRB-0348/P2 discussed and dismissed by the Legislative Council Study Committee on Alcohol Beverages Enforcement at their meeting on September 25, 2018, available at <https://bit.ly/2GLKBSB>.

24. The Attorney General's informal letter is not binding under Wisconsin law.

25. The Attorney General's informal letter's conclusions are illogical. Private property does not become a "public place" when it is rented out to members of the public. If that were the case then hotel rooms, apartments, and vacation cottages would be public places – because they are all available for rent by the public – and the owners and tenants/lessees of such places could consume alcohol on the premises – or serve it to their private guests - only if they held a retail liquor license or permit under Wis. Stat. Ch. 125.

26. The legislator who initially requested the Attorney General's informal letter continues to pressure DOR into taking enforcement action against Private Event Venues like those owned by the Plaintiffs. That legislator sent a follow up letter to DOR on December 11, 2018, asking for "an update regarding how the Department of Revenue intends to respond and implement" the Attorney General's informal letter. A copy of this December 11, 2018 letter is attached as Exhibit C.

27. In response to this letter, then DOR Secretary Richard Chandler responded on December 28, 2018, noting that the Attorney General's informal letter "is different from the longstanding application of the statutes by the Department of Revenue," and then re-iterated DOR's position which was substantially the same as that taken by Tyler Quam nearly a year prior (see ¶ 19, *supra*). A copy of this letter is attached hereto as Exhibit D.

28. Even though then Secretary Chandler purported to maintain DOR's original position regarding licensing and permitting, as he acknowledges in his letter, there is still significant uncertainty surrounding this issue. In his December 28, 2018 response, then Secretary Chandler noted this future uncertainty, stating "I recognize that the next Secretary of Revenue will be able to review Attorney General Schimel's informal analysis and consult with

the next Attorney General and with DOR staff, and then decide whether to continue or change DOR's position in this area.”

29. Private Event Venue owners, such as Plaintiffs, face continued uncertainty as to the legality of their business operations. This litigation seeks to bring certainty to the *existing* statute and to bring an end to the back-and-forth that has cast a dark shadow over the future of Plaintiff's businesses.

30. Not only do Plaintiffs and other Private Event Venues face loss or destruction of their businesses if Wis. Stat. § 125.09(1) is applied to them, they face potential criminal penalties for operating without a license. Wis. Stat. § 125.11(1) provides for significant criminal penalties for violations of Chapter 125: a fine of not more than \$1,000, imprisonment for not more than 90 days, or both.

31. Moreover, even if state officials take no action to enforce against Private Event Venues, the lack of certainty may result in local officials arresting Venue owners and operators or bringing other enforcement actions. Wis. Stat. § 125.14(1) provides, in relevant part, that “any peace officer may arrest without warrant any person committing in his or her presence a violation of this chapter . . . and may, without a search warrant, seize any personal property used in connection with the violation.” The definition of “peace officer” under Wis. Stat § 125.02(12) is expansive and includes “a sheriff, undersheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employee of [DOR] or of the department of justice authorized to act under this chapter.”

32. The business models of the Plaintiffs were built on and have grown around DOR's interpretation of “public place” – allowing their customers/renters to consume legally procured alcohol with their private guests at their private events. They are now subject to

business losses and the possibility of criminal penalties due to the significant uncertainty regarding the interpretation of “public place” under Wis. Stat. § 125.09(1).

33. As a result of this confusion, Plaintiff Farmview has even been targeted in a public forum by someone who has left a negative review for the business claiming that Farmview “[s]kirts WI liquor law.” A copy of this review is attached as Exhibit E. Plaintiff Farmview fears that the uncertainty created by the Defendants’ conduct will have further negative impact on its business operations moving forward.

34. Plaintiff Farmview has no desire to own or operate a tavern. If required to obtain a liquor license, due to limits on available licenses under state law, Plaintiff would need to pay \$10,000 for a reserve license and incur additional expenses to modify its facilities. These expenses would force Farmview to significantly alter its business. Farmview is fearful that, based upon the Defendants’ conduct, if it does not obtain a liquor license and continues to operate its business and honor its already executed contracts, Farmview and its operators could be subject to criminal penalties.

35. Plaintiff Govin, the owners and operators of The Weddin’ Barn, have no desire to own or operate a tavern. When The Weddin’ Barn began operations their municipality had not issued any liquor licenses, and The Weddin’ Barns’ owners were warned by a town official not to even try and apply for a liquor license. Even if The Weddin’ Barn could obtain a liquor license, it would need to incur additional expenses to modify its facilities. These expenses would force The Weddin’ Barn to significantly alter its business. The Weddin’ Barn is fearful that, based upon the uncertainty of the law, if it does not obtain a liquor license, and continues to operate its business and honor its already executed contracts, The Weddin’ Barn and its operators could be subject to criminal penalties.

CLAIM ONE - FOR DECLARATORY RELIEF

36. Plaintiffs reallege and incorporate by reference each of the allegations set forth above.

37. The confusion and doubt regarding the interpretation of “public place,” as that term is used in Wis. Stat. § 125.09(1) by various state officials charged with enforcing that statute, is creating harm to the Plaintiffs.

38. Plaintiffs may bring pre-enforcement challenges to statutes. “The whole philosophy underlying the Uniform Declaratory Judgments Act is that it enables controversies of a justiciable nature to be brought before the courts for settlement and determination prior to the time that a wrong has been committed or threatened.” Borden Co. v. McDowell, 8 Wis. 2d 246, 256, 99 N.W.2d 146 (1959).

39. Plaintiffs “do not need to await actual legal action or even a clearly expressed threat of legal action against them in order to have standing for a declaratory judgment.” Planned Parenthood of Wisconsin, Inc. v. Schimel, 2016 WI App 19, ¶18, 367 Wis. 2d 712 N.W.2d 604. *See also* Wagner v. Milwaukee Cty. Election Comm'n, 2003 WI 103, ¶14, 263 Wis. 2d 709, 666 N.W.2d 816 (“Once the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to invoke the Declaratory Judgment Act.”).

40. Pursuant to Wis. Stat. § 806.04, Plaintiffs seek and are entitled to a declaratory judgment clarifying their rights and determining that private events where attendees consist only of the private guests of the renter of the space which are not open to the general public are not “public places” subject to license or permit requirements under Wis. Stat. § 125.09.

41. There exists a substantial, present, and justiciable controversy between Plaintiffs and the Defendants with respect to the meaning of “public place” as that term is used in Wis. Stat. § 125.09(1).

42. If this Court does not act, Private Event Venues, including those owned by Plaintiffs herein, will continue to see their businesses harmed by the uncertainty of this situation and could be exposed to criminal sanctions if they operate their businesses as they always have.

CLAIM TWO – ALTERNATIVE DECLARATORY RELIEF

43. Plaintiffs reallege and incorporate by reference each of the allegations set forth above.

44. The due process rights guaranteed by the Wisconsin Constitution and the Fourteenth Amendment to the United States Constitution are substantially equivalent. *See In re Commitment of Hager*, 2018 WI 40, ¶17 n. 21, 381 Wis.2d 74, 911 N.W.2d 17.

45. Article I, Section 1 of the Wisconsin Constitution provides in part: “All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness...”

46. Article I, Section 8 of the Wisconsin Constitution provides in part: “No person may be held to answer for a criminal offense without due process of law.”

47. The Wisconsin Supreme Court, analyzing criminal penalties, has held that the constitutional requirements of due process prohibit criminal statutes that are too vague, mandating “fair notice and proper standards for adjudication.” *State v. Courtney*, 74 Wis.2d 705, 709, 247 N.W.2d 714 (1976).

48. The Wisconsin Supreme Court has directed courts to consider two factors when determining whether a statute is void for vagueness:

First, “[a] criminal statute must be sufficiently definite to give a person of ordinary intelligence who seeks to avoid its penalties fair notice of conduct required or prohibited.” *Popanz*, 112 Wis.2d at 173. Second, the “statute must also provide standards for those who enforce the laws and those who adjudicate guilt.” *Id.*

State v. Cissell, 127 Wis. 2d 205, 224–25, 378 N.W.2d 691 (1985) (citing State v. Popanz, 112 Wis. 2d 166, 173, 332 N.W.2d 750 (1983)).

49. Wis. Stat. § 125.09(1) is void for vagueness because the vague and undefined term “public place” does not give a person of ordinary intelligence fair notice of conduct required or prohibited and does not provide standards for those who enforce the laws and adjudicate guilt.

50. For years, DOR has interpreted Wis. Stat. § 125.09(1) as excluding private events at Private Event Venues from the licensing and permitting requirements. If the Attorney General can come to an opposite conclusion without any change being made to the law itself, then ordinary persons, law enforcers, and law adjudicators cannot possibly be expected to understand what conduct the statute is prohibiting.

51. If this Court does not determine that “public place” excludes private events at Private Event Venues, it should, in the alternative, declare that Wis. Stat. § 125.09(1) violates the due process requirements of the Wisconsin Constitution and is void for vagueness.

WHEREFORE, the Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that Private Event Venues, meaning privately owned property rented to third parties for events where attendees consist only of the private guests of the renter, which are not open to the general public, are not “public places” subject to license or permit requirements under Wis. Stat. § 125.09(1).

B. In the alternative, enter a declaratory judgment that Wis. Stat. § 125.09(1) violates the due process requirements of the Wisconsin Constitution and is therefore void.

C. Enjoin the Defendants from enforcing Wis. Stat. § 125.09(1) against Private Event Venues.

D. Grant other such legal and equitable relief as the Court deems just and proper.

Dated this 14th day of January, 2019.

WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Plaintiffs

Electronically signed by Richard M. Esenberg

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Milwaukee, WI 53202-2828

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Lucas Vebber

From: Schmidt, Melissa <Melissa.Schmidt@legis.wisconsin.gov>
Sent: Wednesday, December 12, 2018 12:11 PM
To: Lucas Vebber
Subject: FW: Alcohol at "event barns"

Good afternoon Lucas,

Per your request, here is the email that I received from Tyler Quam that was referenced on page 2 of the memo to the members of the Study Committee on Alcohol Beverages Enforcement, re: "Items for Consideration Related to Alcohol Consumption At Certain Private Events, " (August 15, 2018), available at:
https://docs.legis.wisconsin.gov/misc/lc/study/2018/1789/020_august_22_2018_meeting_10_00_a_m_room_411_south_state_capitol/aug15memo_abe.

Sincerely,

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Phone: (608) 504-5727
<http://lc.legis.wisconsin.gov/>

From: Quam, Tyler - DOR <Tyler.Quam@wisconsin.gov>
Sent: Tuesday, January 23, 2018 10:31 AM
To: Schmidt, Melissa <Melissa.Schmidt@legis.wisconsin.gov>
Cc: Ourada, Thomas D - DOR <Thomas.Ourada@wisconsin.gov>
Subject: RE: Alcohol at "event barns"

Hi Melissa,

Retail alcohol beverage licenses are required only when alcohol beverages are sold OR when consumption of alcohol is occurring in a public place (sec. 125.04(1) and 125.09(1), Wis. Stats.). While "public place" is not defined within statute, the department has researched this issue extensively. Rather than focusing on the location of a particular event, the department considers the nature of the event when determining whether a location is a "public place". Events such as wedding receptions, birthday parties, employee appreciation events, family reunions, etc., where attendees consist only of personally invited guests known to the host and are not open to the general public, do not qualify as public places. As long as alcohol beverages are not sold, either directly or indirectly, at these types of gatherings, an alcohol beverage license is not required. This is consistent with previous opinions and court cases from around the country.

There are many of these types of facilities throughout the state that only lease space to individuals who wish to occupy the space for private events. The hosts of the event typically purchase all alcohol beverages at a licensed retailer prior to the event. The alcohol beverages are then provided free of charge to the guests of the event. Provided that alcohol beverages are not sold and that the event(s) occurring are not open to the public, no retail alcohol beverage license is required for these venues.

Thanks,

Tyler Quam
Special Agent in Charge
Wisconsin Dept. of Revenue
Alcohol & Tobacco Enforcement Unit
Phone (715) 842-2343
Fax (715) 848-1033

From: Schmidt, Melissa A - LEGIS [<mailto:melissa.schmidt@legis.wisconsin.gov>]

Sent: Tuesday, January 23, 2018 9:54 AM

To: Ourada, Thomas D - DOR <Thomas.Ourada@wisconsin.gov>; Quam, Tyler - DOR <Tyler.Quam@wisconsin.gov>

Subject: Alcohol at "event barns"

Good morning Tom and Tyler,

I am researching a question regarding alcohol at "event barns" that do not have an alcohol beverages license. Are either of you aware of an event venue where weddings are held and alcohol is distributed, but the event barn is not licensed? My thought is that this is illegal, but I am not sure all of the laws to cite given that I do not know enough facts.

If either of you have an idea of what I'm talking about, would you please let me know? I'm curious to know if you've shut any of these facilities down, and if so, what statutes you cited.

Thanks,

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Phone: (608) 266-2298
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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

EXHIBIT B

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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.

The Honorable Rob Swearingen
State Representative
November 16, 2018
Page 2

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

The Honorable Rob Swearingen
State Representative
November 16, 2018
Page 3

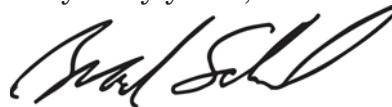
no portion of the statute that would support a distinction between a public place that hosts an event open to all the public, and a public place that may be rented out for a limited private event. The “place,” in both circumstances, is “public” in my view.

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,

A handwritten signature in black ink, appearing to read 'Brad Schimel', with a stylized, flowing script.

Brad D. Schimel
Wisconsin Attorney General

BDS:DPL:alm



ROB SWEARINGEN

STATE REPRESENTATIVE • 34th ASSEMBLY DISTRICT

EXHIBIT C

Office: (608) 237-9134
Toll Free: (888) 534-0034
Rep.Swearigen@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

Mr. Richard Chandler
Secretary
Department of Revenue
2135 Rimrock Road
Madison, WI 53713

December 11, 2018

Dear Secretary Chandler:

I am writing to request an update regarding how the Department of Revenue intends to respond and implement a recent informal opinion that I received from Attorney General Brad D. Schimel on the issue of alcohol beverages consumption at unlicensed event venues. Attached to my letter is the letter from Attorney General Schimel, dated November 16, 2018, which provided his informal opinion on the legality of an unlicensed event venue, such as a wedding barn, that allows the consumption of alcohol beverages at a private event if the event host pays to rent the venue's facilities. As stated in his letter, it is the Attorney General's informal analysis that an event venue is considered a "public place" under s. 125.09 (1), Stats., and thus must hold the applicable retail license in order to allow consumption of alcohol beverages at the event venue.

The crux of the Attorney General's analysis is that event venues that are rented for private events like weddings and are generally open to the public for rent are considered public places under ch. 125, Stats. Specifically:

A broad "private event" exception cannot be supported by the text of the statute; there is simply 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.

[Letter from Attorney General Brad D. Schimel to Representative Rob Swearigen, State Assembly (November 16, 2018), p. 2-3.]

The result of the Attorney General's informal opinion is that event venues must generally obtain the appropriate alcohol beverages retail license or permit, unless a specific statutory exceptions applies. His interpretation is consistent with what my view of the law has been all along and addresses many of the concerns that members of the Legislative Council Study Committee on Alcohol Beverages Enforcement have shared.

However, it is important to note that event venues like wedding barns will not be put out of business under this interpretation. Many opportunities exist for wedding barns to obtain appropriate licensure to serve alcohol at their events. Wedding barns may obtain Class "B" beer licenses to sell beer. They may also obtain "Class B" liquor retail licenses to sell spirits and wine. Wedding barns that are also restaurants may be eligible for a "Class C" wine-only retail license. It is important to remember that of these three licenses, the quota only applies to the "Class B" liquor retail licenses. Also, if the municipality has issued all of its available "Class B" liquor retail licenses, a wedding barn may still be issued a liquor license above the quota, if for example, it is a full-service restaurant with a seating capacity of 300 or more. In addition, a municipality that does not have a "Class B" liquor retail license available to be issued under its quota should work with any neighboring, contiguous municipality that does have an unissued "Class B" liquor retail licenses so that it may be transferred and issued to the wedding barn.

In order for wedding barn operators to continue operating without interruption, I encourage the department to proactively take steps to ensure that operators become properly licensed. If the department chooses not to adopt the Attorney General's analysis, I predict that many venues currently licensed to retail sell alcohol beverages at weddings and other private parties will choose to not renew their license in order to remain competitive.

The department should consider providing a grace period, allowing venues to continue business operations as they apply for the annual alcohol beverages retail licenses that become effective on July 1st. I also encourage the department to actively assist venues through the licensure process; to provide them with the educational and technical assistance necessary to obtain licensure with their respective municipality. For example, it would be helpful for the department to educate venues regarding the various licensure options available to them. Similarly, the department should consider hosting training sessions on the laws governing alcohol beverages retailers and the steps venues should take to comply with these laws.

Please provide me with an update regarding how the department intends to respond and implement Attorney General Schimel's informal opinion, as well as any additional thoughts you may have on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rob Swearingen". The signature is fluid and cursive, with the first name "Rob" being more prominent and the last name "Swearingen" written in a continuous script.

Representative Rob Swearingen
Wisconsin State Assembly 34th District

Attachment



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.

The Honorable Rob Swearingen
State Representative
November 16, 2018
Page 2

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

The Honorable Rob Swearingen
State Representative
November 16, 2018
Page 3

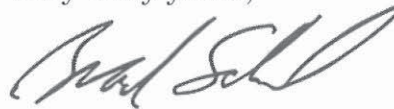
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Very truly yours,

A handwritten signature in black ink, appearing to read "Brad Schimel", written in a cursive style.

Brad D. Schimel
Wisconsin Attorney General

BDS:DPL:alm



State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK ROAD • Mail Stop 624A • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX (608) 266-5718
<http://www.revenue.wi.gov>

Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

December 28, 2018

The Honorable Rob Swearingen
Wisconsin Assembly
123 West – State Capitol
Madison, WI

Dear Rep. Swearingen:

I received your letter dated December 11 discussing the letter that Attorney General Schimel sent to you dated November 16 regarding when event venues such as wedding barns and other venues that rent space for events are required to obtain liquor licenses.

The letter from Attorney General Schimel, which he described as an "informal analysis," said that event venues that rent space for events must always obtain liquor licenses if alcohol is served.

That informal analysis is different from the longstanding application of the statutes by the Department of Revenue. For many years, DOR has consistently said that a liquor license is not needed when a place is rented for an event at which alcohol is served if the event is private and if there is no sale of alcohol there.

DOR's longstanding application of the statutes can be summed up as follows:

- Section 125.09 says an establishment needs to have a license to serve alcohol if the alcohol is being served in a "public place."
 - A public place is a place at which an event open to the public is being held.
 - If an event is private, meaning attendance is limited to invited guests, it is not a public event and the place where it is being held is not a public place at the time that the event is being held.
 - The nature of the event determines whether a place is public or private at the time of the event.
- Section 125.04 says a person must have a liquor license to sell alcohol in any place.

In short, if a place is rented for an event that is a private event, and if there is no sale of alcohol there, a liquor license is not required.

You asked me to let you know whether there would be any change in the Department of Revenue's position or enforcement policy as a result of the informal analysis.

As you know, Governor Walker's term in office ends on January 7, 2019. I will be resigning as Secretary of Revenue effective as of that date. Attorney General Schimel will also be leaving the position of Attorney General.

December 28, 2018

Page 2

Attorney General Schimel's letter said 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." Similarly, I recognize that the next Secretary of Revenue will be able to review Attorney General Schimel's informal analysis and consult with the next Attorney General and with DOR staff, and then decide whether to continue or change DOR's position in this area. I have included information about this issue in the background documents we have prepared for the next Secretary of Revenue.

In light of the fact that DOR has had a longstanding position on this issue, and in light of the upcoming agency leadership changes, I do not believe it would be appropriate to change DOR's position or our enforcement policy at the present time.

Sincerely,

A handwritten signature in cursive script that reads "Richard G. Chandler". The signature is written in dark ink and is positioned above the printed name and title.

Richard G. Chandler
Secretary of Revenue

Farmview Event Barn

N7702 County Road F, Berlin, WI

 Write a review

4.3  6 reviews

Sort by: Most relevant ▼



Andrew Johnson

1 review

 a month ago

Skirts WI liquor law and then claims poor victim status. Raking in \$ on events with zero oversight. Pay for the liquor license, insurance, and bartenders.

 Like

Response from the owner a month ago

To be clear, I do follow the law and am not required to have a liquor license.