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June 9, 2008 (Amended in order to clarify the bulletin applies to civic and religious organizations, add fees and surcharges, and to correct an error in the description of the Daily Temporary Mixed Beverage Permit)
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MARKETING PRACTICES BULLETIN – MPB026
Charitable, Religious or Civic Organizations
Serving Alcoholic Beverages at Fundraising Events

To: Alcoholic Beverage Industry

This bulletin is an attempt to clarify regulations relating to charitable, religious or civic organizations serving alcoholic beverages at fundraising events, as well as the receipt of donations by charitable, religious or civic organizations from members of the alcoholic beverage industry.

Texas has a strict three-tier system in the industry that insists on separation of licensed retailers, wholesalers and manufacturers. Once an organization obtains a temporary permit to sell alcohol, they are considered a licensed retailer and cannot receive donations from someone in the upper tiers of the industry.

Below is a summary of various options available to charitable, religious or civic organizations wishing to serve alcoholic beverages at fundraising events. For further information, attached is a list of temporary permits issued by TABC, who is eligible to apply for them, and which chapter in the Alcoholic Beverage Code addresses them.

Option One is to provide free alcoholic beverages without obtaining a TABC temporary permit. However, to be truly "free" the alcoholic beverage must be available to any adult who requests it. Of course alcoholic beverages should not be served to minors or intoxicated persons.

Under this scenario, the organization may serve donated alcoholic beverages. They may receive product or cash donations, and they may enter into sponsorship or underwriting agreements with members of the alcoholic beverage industry, including agreements for advertising, signage, and product exclusivity.

If a charitable, religious or civic organization who does NOT hold a temporary TABC permit is charging a membership fee, entrance fee, door charge, meal charge or ticket price to attend an event where alcoholic beverages are being served, they must make alcoholic beverages available to any adult who requests it, regardless of whether they have paid the fee. They may offer free alcoholic beverages to the general public outside of the event, but condition entry into the event on a donation or fee.

If alcoholic beverages are available only to paying guests, the cost of the alcoholic beverage is considered to be included in the fee. That constitutes selling the alcoholic beverages in Texas law, and a TABC permit would be required. When alcoholic beverages are provided without a TABC permit, there cannot be any expectation of receiving money. The organization or servers cannot ask for a "donation" or "tip." If the alcoholic beverages will be available only to paying guests, a TABC permit is required.

Option Two is for a charitable, religious or civic organization to obtain a TABC temporary permit to sell alcoholic beverages at an event. If the charitable, religious or civic organization obtains a TABC temporary permit, only alcoholic beverages purchased from an authorized source (licensed distributor/wholesaler or winery) may be sold at the event. The organization would not be able to sell alcoholic beverages that have been donated.

The charitable, religious or civic organization would be able to accept cash donations from folks in the alcoholic beverage industry (or anyone else) and use it for whatever means the organization chooses, whether it is to purchase alcoholic beverages or something else.

Restrictions:

- ◆ It would have to be a "no strings attached" donation. The charitable, religious or civic organization would have free reign to determine how the cash donation would be spent.
- ◆ There could be no written or unwritten agreement or understanding between the organization and the distributor/wholesaler/manufacturer regarding anything being received in exchange for the donation.
- ◆ There could be no written or unwritten agreement or understanding between the organization and the distributor/wholesaler/manufacturer as to what products the charity would sell when a permit is obtained.
- ◆ There could be no written or unwritten agreement or understanding regarding "sponsorship" rights, including signage or advertising.

Option Three is to use a third-party retailer to sell alcoholic beverages at the event. Under this scenario, the charitable, religious or civic organization may receive cash or in-kind donations from manufacturers, wholesalers or retailers. However, the permit to sell alcoholic beverages at the event would be held by a retailer who is independent of the sponsors. The retail permit holder may not receive any direct benefit or service because of sponsorship by a wholesaler or manufacturer of alcoholic beverages.

The charitable, religious or civic organization may enter into an agreement with the retailer whereby the retailer donates a portion of the proceeds from the event to the organization.

The charitable, religious or civic organization may not exchange gifts or donations for exclusive product rights. The independent retailer must retain the right to control the quantity and/or selection of brands of alcoholic beverages bought or sold by the independent retailer.

Manufacturers, wholesalers and retailers may not coerce, persuade or induce the civic, religious or charitable group to persuade the independent retailer to engage in activities that are prohibited by other provisions of the Alcoholic Beverage Code.

This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. The commission will continue to monitor this issue and make necessary regulatory changes as statutorily applicable. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,

A handwritten signature in blue ink that reads "Dexter K. Jones". The signature is fluid and cursive, with the first name being the most prominent.

Dexter K. Jones
Assistant Chief of Field Operations

Attachment: Temporary Permits

TABC TEMPORARY PERMITS

TEMPORARY WINE AND BEER RETAILER'S PERMIT (BH or HP) - Chapter 27

The holder of a temporary wine and beer retailer's permit may sell to the ultimate consumer for consumption on or off the premises, beer, malt liquors, and wine containing alcohol in excess of one half of one percent (1/2 of 1%) by volume but not more than 14 percent or 17 percent by volume (depending on type of local-option election). A temporary wine and beer permit may be issued for a period not to exceed four days and shall be issued only for a picnic, celebration or similar event. The permit **may be issued only to a Wine and Beer Retailer's Permit or Mixed Beverage Permit or to a nonprofit historic preservation organization that has been in existence for at least 30 years.** (HP Code is used if permit is issued to a nonprofit historic preservation organization.) The fee is \$30 with a surcharge of \$171.

TEMPORARY - SPECIAL THREE-DAY WINE AND BEER PERMIT (SB) - Chapter 27

Authorizes the holder to sell to the ultimate consumer for the on-premises consumption of wine, beer and malt liquor containing alcohol in excess of one-half of one percent (1/2 of 1%) by volume but not more than 14 percent or 17 percent (depending on type of local-option election) by volume. A *Special Three-Day Wine and Beer Permit* **may be issued to a nonprofit charitable, civic, or religious organization for the temporary serving of wine and beer at a picnic, celebration, or similar event sponsored by that organization.** The fee is \$30 with a surcharge of \$171.

TEMPORARY PERMIT - CHARITABLE AUCTION PERMIT (CA) – Chapter 53

Authorizes the holder to conduct an auction where the sale of the type of alcoholic beverage to be auctioned is authorized by a local-option election. The permit **may be issued only to an organization exempt by an I.R.S. 501(c)(3)** and may be issued only one per calendar year. Term is for a maximum of five days. The fee is \$25 with a surcharge of \$171.

DAILY TEMPORARY MIXED BEVERAGE PERMIT (TB) - Chapter 30

Permit authorizes the sale of mixed beverages for consumption on the premises for which the permit is issued and **may be issued to the holder of a Mixed Beverage Permit** for a picnic, celebration or similar event. The Permit **may also be issued to a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure, to an organization formed for a specific charitable or civic purpose, to a fraternal organization in existence for over five years with a regular membership, or to a religious organization.** If issued to an organization, that organization may not hold more than 10 temporary permits in a calendar year. The fee is \$50 with a surcharge of \$171.

DAILY TEMPORARY PRIVATE CLUB PERMIT (TN) - Chapter 33

Permit authorizes the service of alcoholic beverages for consumption on the premises for which the permit is issued and **may be issued only to the holder of a Private Club Registration Permit, Private Club Wine and Beer Permit or Private Club Exemption Certificate Permit** for a location in the same county where the permits are located. It may only be issued for a picnic, celebration, or similar event sponsored by a political party or association supporting a candidate for public office or proposed amendment or a charitable or civic organization or fraternal organization with a regular membership in existence more than five years or a religious organization. No more than two daily temporary private club permits may be issued in each calendar year for events sponsored by the same party, association, or organization. The fee is \$50 with a surcharge of \$192.