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Bottoms Up: Serving Alcohol at Your Nonprofit's Event

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 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
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Setting the Stage

- “I am sure the Americans can fix nothing without a drink. If you meet, you drink; if you part, you drink; if you make acquaintance, you drink; if you close a bargain, you drink; They drink because it is hot; they drink because it is cold. If successful in elections, they drink and rejoice; if not, they drink and swear; they begin to drink early in the morning, they leave off late at night; they commence it early in life; and they continue it, until they soon drop into the grave.” – Frederick Marryat in *A Diary in America*.
- In 1722, Benjamin Franklin compiled a list of terms for “drunk.” He came up with 19 examples. Fifteen years later, he could cite 288 examples, including “juicy,” “thawed,” and “had a thump over the head with Sampson’s jawbone.”
- By 1763 rum was pouring out of 159 commercial distilleries in New England alone, and by the 1820s liquor was so plentiful and so freely available, it was less expensive than tea.

Setting the Stage

- Out in the countryside, most farmers kept a barrel of hard cider by the door for family and anyone who might drop by.
- Soldiers in the U.S. Army had been receiving four ounces of whiskey as part of their daily ration since 1782; George Washington said, “ the benefits arising from moderate use of strong liquor have been experience in all armies, and are not to be disputed.”
- By 1830, the tolling of a town bell at 11 a.m. and again at 4 p.m. marked “grog-time.”
- Multiply the amount Americans drink today by three and you’ll have an idea of what much of the nineteenth century was like.

Setting the Stage

- In 1919, the 18th Amendment to the U.S. Constitution was passed. A mere 13 years later it was repealed by the 21st Amendment.

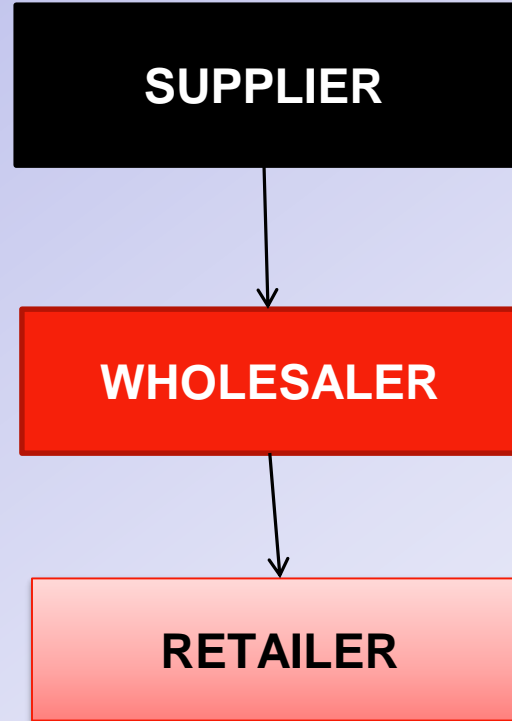
Foundational Aspects of Alcohol Industry

- THREE JURISDICTIONS
- THREE-TIER SYSTEM
- TIED-HOUSE LAWS
- FRANCHISE LAW

Three Jurisdictions

1. **Federal**: Alcohol Tobacco Tax and Trade Bureau (TTB)
 - Federal Alcohol Administration Act
2. **State**: Alcohol & Tobacco Division of the Georgia Department of Revenue (ATD and DOR)
 - O.C.G.A Title 3
 - Revenue Rule 560-2 et al.
3. **Local**: City/County

Three-Tier System



Tied-House Laws

The crux of tied-house laws was, and is, about maintaining retailer independence and also, in turn, preventing any particular manufacturer from gaining an unfair competitive advantage through favorable placement of its products at the retail level.

Back in the 1800's, fierce competition pushed alcohol suppliers towards aggressive control and marketing tactics. Suppliers acquired ownership interests and otherwise gained control by incentivizing retail dealers to promote and sell their alcoholic beverage products **to the exclusion of other manufacturers' products**. Proving to generate profits, suppliers pushed for the opening of more and more retail outlets and continued tying themselves to them to further pump large volumes of their products into local communities.

Led to proliferation of tied retail outlets (or saloons). Led to drunkenness. Led to Prohibition.

NO CROSS-TIER OWNERSHIP.

Tied-House Laws

THING-OF-VALUE PROHIBITIONS

- A contract whereby a retail establishment was obligated to sell exclusively the products of one manufacturer in exchange for some benefit/value to the retailer.
- The furnishing of bars to a retailer by a manufacturer.
- The furnishing of electric signs to a retailer by a manufacturer.
- The furnishing of equipment to a retailer by a manufacturer.
- The extension of credit to a retailer by a manufacturer.
- The payment of rebates to a retailer by a manufacturer.
- The compensation for advertising costs to a retailer by a manufacturer.

Franchise Laws

- Why is it called a “franchise” system?
- Franchise laws generally require alcohol suppliers to designate an exclusive wholesaler for each brand for each territory in which that brand is sold in the State; and, that designation may not be changed without cause.

The Local Jurisdiction: Common Application Requirements

- Fees and Application Forms, of course
- Background checks and qualification requirements
- Financial investment documentation
- Evidence of legal access (lease or deed)
- Ancillary licenses and approvals, business license, etc.
- Corporate documents for entity applicant

The Local Jurisdiction: How long does it take?

- Hearing requirements
- Public notice and advertising requirements
- Prerequisite ancillary inspection approvals
- Administrative issuance

The State Permit: Department of Revenue

- State permit issues after local jurisdiction permit is approved
- Applications are made through a new online GTC Taxpayer System
 - [https://gtc.dor.ga.gov/ /](https://gtc.dor.ga.gov/)
- Required items for a special event permit:
 - Background items for individuals related to the applicant entity:
 - Personnel History Form
 - Financial Affidavit
 - Citizenship Affidavit
 - Fingerprints
 - Tax Clearance
 - Evidence of legal access (rental agreement)
 - Copy of the local permit
 - Power of Attorney (if applicable)

When do you need a permit?

What constitutes a sale of alcohol?

Scenario 1: Jim walks into a hotel and purchases a room for one night for \$100. When he gets to the room, there is a complimentary bottle of champagne next to the bed. Does the hotel need an alcohol license to offer its guest a “free” bottle of champagne?

Scenario 2: A nonprofit wants to host a fundraiser and plans to sell tickets to the event for \$25. At the event, attendees may receive free drinks. Does the nonprofit need an alcohol license?

Social host liability

- Social host liability is commonly referred to as dram shop law. A typical concern for an individual license holder of an alcohol license is whether he or she might be subject to liability under the Dram Shop Act.
- Historically, a place that sold alcoholic beverages, such as a bar or tavern, was known as a “dram shop.” At common law, dram shops or other providers of alcohol were not liable for selling or serving alcohol to individuals who later injured themselves or third parties. The belief was that the consumption of alcohol, rather than its sale, was the proximate cause of any injuries.
- Today, however, the majority of U.S. states, including Georgia, have imposed liability, in derogation of the common law, on dram shops and other providers of alcohol, either through statutes, case law, or both.

Social host liability

- The Georgia legislature enacted O.C.G.A. § 51-1-40 in 1988 to codify dram shop liability in the state.
- Subsection (a) of O.C.G.A. § 51-1-40 maintains the common law rule that consuming alcohol, rather than furnishing it, is the proximate cause of any injury.
- Subsection (b) however provides two instances where the providers will nevertheless be held liable.
- **These two instances involve either: serving a minor (someone under 21) or serving someone (21 or over) who is noticeably intoxicated. In order for liability to attach in either situation, the plaintiff must prove three elements.**
 1. **Defendant knowingly furnished alcoholic beverages to a person under 21 or to a person (age 21 or older) who was in a state of noticeable intoxication;**
 2. **Defendant did so knowing that minor or intoxicated person would soon be driving a motor vehicle; and**
 3. **The act of providing the alcohol was the proximate cause of the injuries sustained by the plaintiff.**

Social host liability

- The defendant(s) is usually the server or bartender who actually furnished the alcohol to the minor or intoxicated person. Sometimes the owner(s) of the establishment will be sued under a theory of respondeat superior, which is a doctrine holding an employer liable for the employee's wrongful acts committed within the scope of the employment.
- An important point to remember is that the minor or intoxicated person, if injured, cannot bring an action under the Dram Shop Act; only an injured third party may bring an action.

Social host liability

- **Parents of minor cause of action**
 - As stated above, an injured minor who consumed alcoholic beverages cannot bring an action against the provider of those alcoholic beverages under the Dram Shop Act; however, the parents of the minor, may bring an action under O.C.G.A. § 51-1-18(a), which provides as follows:
 - *The custodial parent or parents shall have a right of action against any person who shall sell or furnish alcoholic beverages to that parent's underage child for the child's use without the permission of the child's parent.*

Social host liability

- **Sales to a noticeably intoxicated person (civil)**
 - In instances where no third party is injured, a civil action might be brought against the server or bartender or owner/employer who furnished the alcohol to a noticeably intoxicated person under O.C.G.A. § 3-3-22, which provides as follows:
 - *No alcoholic beverage shall be sold, bartered, exchanged, given, provided, or furnished to any person who is in a state of noticeable intoxication.*
 - Additionally, a violation of O.C.G.A. § 3-3-22 could result in a criminal proceeding being brought against the server or bartender who furnished the alcohol to the intoxicated person.

Social host liability

- **Sales to a noticeably intoxicated person (criminal)**
 - It is possible that a criminal action could be brought against the server or bartender under O.C.G.A. § 3-3-22 by way of O.C.G.A. § 3-3-9, which provides as follows:
 - *(a) It is unlawful for any person knowingly and intentionally to violate any prohibition contained in this chapter.*
 - *(b) Except as otherwise provided in this chapter, any person who violates any prohibition contained in this chapter shall be guilty of a misdemeanor.*

Social host liability

- **Sales to a minor as a criminal violation under State law**
 - O.C.G.A. § 3-3-23(a)(1) provides,
 - *No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age.*
 - O.C.G.A. § 3-3-23.1(a) provides,
 - *It is unlawful for any person knowingly to violate any prohibition contained in Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchasing, attempting to purchase, and possession of alcoholic beverages by, a person under 21 years of age.*
 - O.C.G.A. § 3-3-23.1(b)(1) provides in part,
 - *Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor.*

Social host liability

- **Sales to a minor as a criminal violation under City of Atlanta ordinances**
 - City of Atlanta Ordinance 10-10(a)(1) provides,
 - *No person directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age.*
 - Code § 10-10(h) provides,
 - *Any person convicted of violating any prohibition contained in subsection (a) of this section shall be punished by a fine not to exceed \$1,000.00 or imprisonment in the city jail or stockade for not more than 180 days or both.... Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.*

“Take Aways”

- Three jurisdictions; three tiers; tied-house laws; and franchise laws.
- Determine whether a permit is required – err on the side of obtaining permit. Remember to check both local and state laws.
- Get liquor liability insurance.

Questions?



For More Information:

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