



STATE OF IDAHO

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October 9, 1990

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Ms. Rosen:

By letter dated September 5, 1990, you requested an opinion from this office regarding the definition of the word "premises," as used in the provisions of the Idaho Code regulating the retail sale of liquor by the drink. Title 23, ch. 9, Idaho Code. Your request arises from recent activities by the proprietors of the Wooden Nickel, a bar in Lewiston, Idaho, licensed to sell liquor by the drink as well as beer and wine. These people have leased a tavern adjacent to the Wooden Nickel known as Carters Inn and have now begun to sell liquor by the drink at Carters Inn without a separate liquor license. There is a large, unpaved parking area between the two businesses and it is evident that the two establishments are distinct and separate businesses. There is no common scheme to the businesses nor improvements indicating such.

The proprietors of the Wooden Nickel claim that pursuant to Idaho Code § 23-902(k), as amended in 1986, they are permitted to sell liquor by the drink in both establishments so long as the bars are located on adjacent parcels of property. This claim is based upon their interpretation of the term "premises" as defined by Idaho Code § 23-902(k).

Prior to 1986, "premises" for the purpose of selling liquor by the drink was defined by Idaho Code § 23-902(j):

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j. "Premises" means the building in which the sale of liquor by the drink at retail is authorized under the provisions of this act.

In 1986 the Idaho Legislature amended Idaho Code § 23-902 and expanded the definition of the term "premises."

23-902: Definitions--k. "Premises" means the building and contiguous property owned, or leased or used under a governmental permit by a licensee as part of the business establishment in the business of sale of liquor by the drink at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of liquor by the drink at retail is authorized under the provisions of law. (Emphasis added.)

The legislative intent in amending the definition was to "allow service of alcoholic beverages on patios, terraces, and decks." (Minutes, House State Affairs Committee, February 26, 1986.) The Statement of Purpose accompanying the legislation, Senate Bill 1362, states further:

The purpose of this measure is to expand the definition of the word PREMISES as defined in Section 23-902, Idaho Code.

The intent is to clarify the existing law so that parties licensed to sell liquor by-the-drink will be permitted to utilize their licensed property rather than just the interior portions of their licensed buildings.

Present language is not clear about the legal status of outdoor bars at poolside fashion shows or bars set up at outdoor barbecue pits where food is served.

The changes contained in this measure will clearly permit such functions without resorting to temporary construction projects that may make such an area part of the building or to other subterfuges. (Emphasis added.)

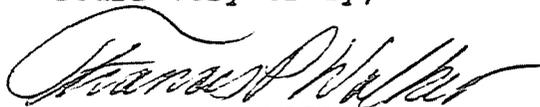
The subsection is not the model of clarity, yet the statute is directed to a single business establishment. The amended definition allows the holder of a liquor license to utilize the licensed property, not merely the enclosed structures. There is nothing in the legislative proceedings amending Idaho Code § 23-902 which would indicate an intent to expand the term "premises"

Denise L. Rosen
Page 3
October 9, 1990

to include two separate business establishments. Thus, there is no basis to conclude that two separate and distinct establishments can operate under one license simply because the establishments are located on contiguous parcels of property. The same holds true for beer and wine licenses pursuant to § 23-1001(j).

This letter is limited to the factual circumstances presented in your letter. If I may be of further help in this matter, please do not hesitate to contact me.

Yours very truly,



FRANCIS P. WALKER
Deputy Attorney General

FPW/tg