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STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

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Lt. Robert Clements  
Bureau Manager  
Alcohol Beverage Control  
Idaho State Police  
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Meridian, ID 83680-0700

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

Dear Lt. Clements:

This guideline is in response to your recent inquiry regarding the application of Idaho Code §§ 23-943 and 23-945—the requirement that a “place” (basically, a bar room) restrict access to persons over 21 years of age and to post the restriction clearly at the entrance to the “place”—to an establishment that is licensed as a restaurant and also contains a “place.” Particularly, whether the “blanket exception” to the presence and posting requirements for restaurants, provided for in Idaho Code § 23-944(1) and referred to in a 1993 Guideline of the Attorney General, applies also to a place that is part of the same premises as a restaurant. Or, as it was succinctly put, are minors restricted from being present in a “place,” even if the “place” is within a restaurant?

**QUESTION PRESENTED**

If a restaurant that serves alcohol has a separate room in which the alcohol is kept and mixed, such as a cocktail lounge or tavern, are underage persons prohibited from entering that room, and should the room be posted as restricting entry or loitering by persons under twenty-one (21) years of age?

**CONCLUSION**

Yes.

## ANALYSIS

Idaho law prohibits persons under 21 years of age from being in, or loitering about, bars, cocktail lounges and taprooms. The effective provisions are found in the alcohol code at Idaho Code §§ 23-941 to 23-946. These provisions call bar rooms a "place" and prohibit persons under 21 years of age from being in the "place," further requiring the "place" to be posted to prevent entry of persons under 21 years of age.<sup>1</sup> These restrictions further the public policy underlying that portion of the alcohol code dealing with minors, found in Idaho Code § 23-941:

It is hereby declared that the intent of this act is to *restrict persons* under the ages herein specified *from entering, remaining in or loitering in or about certain places*, as herein defined, which are operated and commonly known as taverns, barrooms, taprooms and cocktail lounges *and which do not come within the definition of restaurant* as herein contained and are not otherwise expressly exempted from the restrictions herein contained.

(Emphasis added.) Thus, the clear intent of the legislature is to restrict access by persons under 21 years of age to "places," but not to "restaurants."

The legislature effected its intent by prohibiting those under 21 years of age from being present in a "place," pursuant to Idaho Code § 23-943, while enacting an exception, in Idaho Code § 23-944(1), allowing persons under 21 years of age to enter or be present:

(1) *upon the premises of any restaurant*, as herein defined, or in any railroad observation or club car or any airplane of a commercial airline,

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<sup>1</sup> Idaho Code § 23-943 prohibits persons under 21 years of age from entering, or remaining in, or loitering in or about any prohibited "place":

No person under the age of twenty-one (21) years shall enter, remain in or loiter in or about *any place, as herein defined*, licensed for the sale of liquor by the drink at retail, or sale of beer for consumption on the premises . . . .

(Emphasis added.) Further, Idaho Code § 23-945 requires:

Every licensee herein referred to shall keep a sign conspicuously posted over or near each entrance to any *place* from which persons under twenty-one (21) years are herein restricted giving public notice of such fact . . . .

(Emphasis added.)

*notwithstanding that such premises may also be licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcohol beverages, or beer, or both, are prepared, mixed, dispensed and serve and consumed therein.*

(Emphasis added.) As noted by the 1993 Guideline, this creates a “blanket exception” to the access restrictions and posting requirement for any “restaurant.” However, by its plain language, this exception does not apply to anything except “the premises of any restaurant.” Whether a person under 21 years of age is denied access, and whether posting is required pursuant to Idaho Code § 23-945, therefore turns on the definitions of “place,” “premise” and “restaurant.”

Idaho Code § 23-902(13) defines “premises”:

“Premises” means the building and contiguous property owned, or leased or used under a government 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.

“Premises” comprise the whole of the property owned, leased or used by a business, which business is licensed to sell alcohol by the drink at retail.

Idaho Code § 23-942 defines “place” and “restaurant”:

(b) “Place,” as used in this act, means *any room of any premises* licensed for the sale of liquor by the drink at retail wherein there is a bar and liquor, bar supplies and equipment are kept and where beverages containing alcoholic liquor are prepared or mixed and served for consumption therein, and *any room of any premises* licensed for the sale of beer for consumption on the premises wherein there is a bar and beer, bar supplies and equipment are kept and where beer is drawn and poured for consumption therein.

(c) “Restaurant,” as used in this act, means any restaurant, café, hotel dining room, coffee shop, cafeteria, railroad dining car or other *eating establishment having kitchen and cooking facilities for the preparation of food and where hot meals are regularly served to the public.*

(Emphasis added.) By the plain language of these definitions, a “place” is a *room*, a discrete part of a premises licensed for the sale of alcohol by the drink at retail. Similarly, a “restaurant” is construed, in the context of this statute, as a discrete part of a premises—hence the examples of “hotel dining room, coffee shop, cafeteria, [and] railroad dining car.”

It is troublesome that Idaho Code § 23-944(1) employs the word “premises”; however, the context of its usage—“*upon the premises of any restaurant*”—suggests the more common, non-statutory definition of “premises.” The statute could certainly be clearer in this respect.

However, construing these statutes together, according to the rules of statutory construction, the “blanket exception” provided for “restaurants” in Idaho Code § 23-944(1) is limited to “restaurants” and not to any “place”—whether that “place” is a room within the architectural confines of the restaurant itself, a room adjacent to the restaurant as part of an overall premises licensed to sell alcohol by the drink at retail, or totally unattached.

The key analysis is whether the location concerned is a “place”—any room of any premises that serves and stores alcohol that cannot also be defined as a restaurant itself—or is simply an area serving alcohol that is part and parcel of a restaurant. If the location concerned is a “place,” access must be restricted and the entrance to the area must be posted. If the location concerned is simply an area of a restaurant that also serves alcohol, persons under 21 years of age are permitted to be present and no posting is required.

It should be understood that an Attorney General’s Legal Guideline is not a directive but an objective review of what statutes authorize or require, as well as the best prediction available of how a reviewing court is likely to view that authority.

Sincerely,



STEPHEN A. BYWATER  
Deputy Attorney General  
Chief, Criminal Division