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SPRINGFIELD

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FILE NO. S-1139

LIQUORS:
Sale or Delivery
in Public Building

Honorable Martin Rudman
State's Attorney
Will County
Joliet, Illinois 60431

Dear Mr. Rudman:

I have your letter wherein you request my opinion
on the following question:

"May an Illinois Municipal Corporation lease or otherwise permit its facilities to be used by a charitable organization for a function where alcoholic beverages will be delivered to participants thereof by the sale of tickets or by gratuitous disbursement?"

For the reasons set forth below I am of the opinion that the answer to your question is no.

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Section 11 of article VI of "AN ACT relating to alcoholic liquors" [hereinafter the Liquor Control Act] (Ill. Rev. Stat. 1975, ch. 43, par. 130) provides in pertinent part:

"No alcoholic liquors shall be sold or delivered in any building belonging to or under the control of the State or any political subdivision thereof;
* * *"

The question you raise is whether the alcoholic liquor would be "sold or delivered" in the building of the municipal corporation in the situation you have described. Although section 11 contains a number of exceptions to this prohibition, none of them appear to be relevant to your situation.

The word "sale" is defined by section 2.21 of article I (Ill. Rev. Stat. 1975, ch. 43, par. 95.21) of the Act as follows:

"'Sale' means any transfer, exchange or barter in any manner, or by any means whatsoever, including the transfer of alcoholic liquors by and through the transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee. The term 'sale' includes any transfer of alcoholic liquor from a foreign importer's license to an importing distributor's license even if both licenses are held by the same person."

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Therefore, section 11 of article VI must be read to prohibit alcoholic liquors from being "transferred, exchanged or bartered in any manner" in a municipal corporation's building. Distribution of alcoholic liquors in return for tickets is clearly a transfer, exchange, or barter. Similarly, the gratuitous disbursement of alcoholic liquors is clearly a transfer of the liquors. Although the transfer, exchange or barter previously had to be "for a consideration" to constitute a "sale" (Laws of 1933-1934, Second Sp. Session, p. 57), the consideration requirement was deleted by Laws of 1949, p. 804. Thus, when alcoholic liquors are distributed either in return for tickets or gratuitously they are "sold" within the meaning of section 11 of article VI.

Even if the distribution of alcoholic liquors in return for tickets or gratuitously did not constitute a "sale" in a municipal building, it certainly would constitute a "delivery" in the building for purposes of section 11. In either case the alcoholic liquors would be delivered from the charitable organization to the recipient in the municipal building.

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It is therefore my opinion that distribution of alcoholic liquors by the sale of tickets or gratuitously would constitute a violation of section 11 of article VII of the Liquor Control Act, and that as a result an Illinois Municipal Corporation may not lease or otherwise permit its facilities to be used by a charitable organization for a function where alcoholic beverages will be distributed either by the sale of tickets or gratuitous disbursement.

In the materials you have enclosed it is suggested that my prior Opinion No. S-699 (1974 Ill. Att'y. Gen. Op. No. 86) dictates the opposite result. The question in S-699 was whether the operation of a "bottle club" violated a county referendum prohibiting the sale at retail of alcoholic liquor within the county. There, the individual brought his own liquor, deposited it with the bartender and then purchased individual set-ups from the bartender. The individual would therefore have been drinking his own alcoholic liquor which he had purchased elsewhere and brought to the club, merely buying the set-ups from the bartender. It therefore appeared that no retail sale occurred at the "bottle

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club". The conduct involved did not clearly violate the local referendum against retail sales of alcoholic liquor and the question therefore was whether it amounted to a shift or device to evade the prohibition, which section 12 of article IX of the Liquor Control Act proscribes.

In the situation you have described, on the other hand, it is not necessary to deal with the question of whether the conduct involved is an attempt to evade a prohibition contained in the Liquor Control Act because that conduct clearly violates section 11 of article VI. Thus, S-699 is not applicable to the situation you have described.

Very truly yours,

A T T O R N E Y G E N E R A L