

April 6, 1993

Mr. Robin Dunn  
Jefferson County Prosecuting Attorney  
P.O. Box 276  
Rigby, ID 83442

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

Dear Mr. Dunn:

**QUESTIONS PRESENTED**

1. Whether persons under the age of 21 may enter and remain at an establishment that serves as a bar and as a restaurant.
2. Does Idaho Code § 23-944(b) require that the bar be partitioned from the restaurant portion of the establishment?
3. Can the City of Ririe impose an ordinance requiring partitioning of the establishment?

**CONCLUSION**

1. Yes. Provided that the liquor license is endorsed that the license has been issued to a restaurant.
2. No.
3. No.

**BRIEF SYNOPSIS OF FACTS**

Located in Ririe, Jefferson County, Idaho, is an establishment that has served as a bar for a number of years. Recently, the bar has added a grill in order to serve hamburgers and other grilled foods. Installing the grill allowed the establishment to obtain a restaurant license. Since obtaining the restaurant license, the bar has removed its signs restricting entrance to individuals under the age of 21 and no longer restricts entrance to the establishment. As a result, many individuals under the age of 21 years of age, including many high school students, frequent the establishment.

## ANALYSIS

### Question No. 1:

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 liquor 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.

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

**Persons under specified ages forbidden to enter, remain in or loiter at certain licensed places.--** No person under the age of twenty-one (21) years shall enter, remain in or loiter in or about any place, as herein defined...nor shall any licensee of either such place, or any person in charge thereof, or on duty while employed by the licensee therein, permit or allow any person under the age specified with respect thereto to remain in or loiter about such place . . . .

Idaho Code § 23-943 (Supp. 1992). The code defines "place" as follows:

**Definitions.--** The following definitions shall apply in the interpretation of the enforcement of this act:

. . . .

(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 or poured and served for consumption therein.

Idaho Code § 23-942 (1977) (emphasis added). As can be seen from the underlined portions, "place" is defined as a subpart of a "premises" which is defined elsewhere in the

liquor code.<sup>1</sup> A "place" is "room" within the licensed premises that meets the other requirements of the definition such as containing stored liquor, supplies and equipment.

An exception is made for restaurants where persons under 21 may enter, even if the room would be otherwise considered a "place." Idaho Code § 23-944 provides certain exceptions to the prohibition of § 23-943, including an exception for "restaurants":<sup>2</sup>

**Exceptions from restriction on entering or remaining.--** It shall not be unlawful for, nor shall section 23-943, Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being:

(a) upon the premises of any restaurant, as herein defined . . . 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 alcoholic beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein.

Idaho Code § 23-944 (Supp. 1992) (emphasis added). Subsection (a) provides an exception for "restaurants" as they are defined in the code and permits underage persons to be on the "premises" of the restaurant even if it is otherwise defined as a "place." Thus, the prohibition against the entry of underage persons in the "place" does not apply to premises which fit the definition of restaurant.

This conclusion is supported by other parts of the statute. Idaho Code § 23-946 provides for the endorsement on an alcohol beverage license for premises being operated as a restaurant:

**Statement made by licensees of premises operated as restaurants -- Indorsement upon license.--** (a) Every applicant for a state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises claiming that the premises for which such license is sought

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<sup>1</sup> Idaho Code § 23-902(k).

<sup>2</sup> "Restaurant" is also defined in Idaho Code § 23-942:

"Restaurant," as used in this act, means any restaurant, cafe, 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.)

constitute and are operated as a restaurant, as herein defined, shall, on each application for state license and on each application for renewal of license, state that such premises constitute or are operated as such restaurant. Upon issuance of state license for the sale of liquor by the drink or for the sale of beer for consumption on the premises, for premises constituting and operated as a restaurant, the licensee of which has made the proper statement on the application, the director shall indorse on the face of the license the fact that it has been issued to a restaurant as herein defined. Unless such statement shall have been filed with the director and his said indorsement shall appear on the face of the license, the restrictions contained in section 23-943, Idaho Code, shall apply, notwithstanding that such premises may in fact constitute and be operated as a restaurant, and the posting of signs as provided for in section 23-945, Idaho Code, shall be required . . . .

Idaho Code § 23-946 (Supp. 1992) (emphasis added). The underlined portion of the section above states that restrictions of § 23-943 apply unless the licensee has received a license containing a "restaurant" endorsement. The clear intent seems to be to draw a bright line as to establishments which must post signs and enforce the restrictions of § 23-943, and those which do not. Restaurants do not.

Further, the purpose of these sections is described in a policy statement included in the code:

**Declaration of public policy.** -- 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.

Idaho Code § 23-941 (1977) (emphasis added). Thus, the intent of the statutory provisions is that underage persons will be excluded from licensed premises which do not fall within the definition of a restaurant.

In practice, this policy means that licensed premises with a restaurant endorsement are not required to prohibit entry by persons under 21 years of age. Persons under 21 years of age can freely enter and remain in such an establishment.

**Question No. 2:**

Does Idaho Code § 23-944(b) require that the bar be partitioned from the restaurant portion of the establishment? Idaho Code 23-944 states:

**Exceptions from restriction on entering or remaining.**-- It shall not be unlawful for, nor shall section 23-943, Idaho Code, be construed to restrict, any person under the age of twenty-one (21) years from entering or being:

.....

(b) in any building, a part or portions of which is used as a place, as herein defined, provided such place is separated or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under the ages specified with respect thereto in section 23-943, Idaho Code, from entering therein.

(Emphasis added.) Subsection (b) permits any building to be so partitioned as to separate the "place" from other areas of the building. For example, a hotel can designate a room or rooms as the "place" and restrict access to the "place" without having to restrict access to other "common" areas in the building, such as the convention center, meeting rooms or other similar rooms.

If subsection (b) were read to require a partitioning of the place from the rest of the premises, then subsection (a), providing a blanket exception for "restaurants," is superfluous. The legislature cannot be presumed to have created superfluous statutory provisions.

Construing the two provisions together gives purpose to the statute and avoids any ambiguity. Therefore, subsection (b) cannot be construed to require a bar to be partitioned from the restaurant portion of the premises.

**Question No. 3:**

Can the City of Ririe impose an ordinance requiring partitioning of the establishment? Idaho Code § 23-916 states:

**COUNTY AND CITY LICENSES.** In addition to the licensing and control herein provided for the retail sale of liquor by the drink, each county and incorporated city in the state of Idaho is hereby authorized and

empowered to license the sale of liquor by the drink at retail within the corporate limits of such city. . . . The governing authority for such city may provide further regulations for the control of such business, and the board of county commissioners of any county may fix the fee for, and may regulate and control the use of, any license issued for the sale of liquor by the drink at retail in any licensed premises not situate within the incorporated limits of any city, not in conflict with the provisions of this act.

This statute is in harmony with the Idaho Constitution, art. 12, sec. 2, which authorizes a municipality to pass ordinances that are not in conflict with state law. A municipality does have authority to regulate the sale of liquor by the drink at retail within its municipal boundaries. Would this authority allow it to require an establishment to partition the alcohol storage and serving area from the restaurant portion of the premises?

It would appear that any ordinance requiring the partition of the premises would go beyond and conflict with the state statute. Envirosafe Serv. of Idaho v. Cty. of Owyhee, 112 Idaho 687, 735 P.2d 998 (1987); Caesar v. State, 101 Idaho 158, 610 P.2d 517 (1980).

Idaho Code § 23-944 provides an exception from restriction for the premises of a restaurant, even though the premises is also "licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcoholic beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein." The state statute does not require a partition. Any attempt to make further requirements in the nature of a partition would conflict with the statute.

An ordinance of this type would also conflict with the stated purpose of the statute, which specifically states that restaurants are exempted from the requirement of restricting access on the account of age.

Therefore, it appears that any municipal ordinance requiring a partition would be conflicting and would therefore be unconstitutional.

Very truly yours,

CLAYNE S. ZOLLINGER, JR.  
Deputy Attorney General  
Department of Law Enforcement