



## **Advisory Opinion 19-04: Legality of Outdoor Bars**

### **I. Background**

The following question was posed to the Alcohol and Tobacco Commission:

1. Are outdoor bars illegal?

Requestor makes the following points throughout his discussion of the legality of outdoor bars:

1. There is no explicit statutory ban in IC Title 7.1;
2. There is no explicit ban under 905 IAC;
3. In any mention of outdoor service in 905 IAC, there is no specific cite to a statute of which it affects, which is not a proper way to “implement, interpret, or prescribe laws”;
4. There are not enough specific laws or rules where a ban can be inferred;
5. The present banning of outdoor bars is a policy of the ATC, not based in explicit language nor can it be inferred through rules and statutes that they are illegal.

### **II. Analysis & Conclusion**

Indiana Code 7.1-3-20-28 outlines the qualifications for a permittee to have a beer garden and Indiana Code 7.1-3-20-28.5 outlines the qualifications for a permittee to have a patio or rooftop of a civic center or recreational facility.

A retail permittee can sell alcohol “for on-premises consumption in an outdoor beer garden that: (1) has a bar; (2) is accessible only through the permit premises; and (3) is defined area that is enclosed by (A) the outside walls of the permit premises; or (B) a nontransparent wall that is at least seventy-two (72) inches in height.” IC 7.1-3-20-28.

The holder of a civic center permit or a “a retail permit that operates as a recreational facility offering bowling, arcade games, and outside volleyball courts or other outside recreational games on the licensed premises...which has a gross business of at least one million dollars (\$1,000,000) in the retail sale of food may serve alcohol for on-premises consumption from a bar that is located on an outside patio, porch, veranda, terrace, or rooftop of a building that is contiguous to the main building of the licensed premises.” 7.1-3-20-28.5.

While there is no “explicit statutory ban” of outdoor bars in Title 7.1 or 905 IAC, the above-referenced statutes outline the qualifications of a retail or civic center permittee to operate a beer garden or bar on an outside patio, porch, veranda, terrace or rooftop. Therefore, outdoor bars are legal in Indiana should the permitted premises meet the qualifications outlined in IC 7.1-3-20-28 and IC 7.1-3-20-28.5.



DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2019 Indiana Code. Every advisory opinion is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.