



STATE OF INDIANA  
ALCOHOL AND TOBACCO COMMISSION

302 West Washington Street  
IGCS Room E114  
Indianapolis, IN 46204

Telephone (317) 232-2430  
Fax (317) 233-6114  
www.IN.gov/atc

**Advisory Opinion 24-01: Carryout of Alcoholic Beverages from Permit Premises**

**I. Issue or Question Presented**

The following question was posed to the Indiana Alcohol and Tobacco Commission (“Commission”):

May a private club give away alcohol to its members for carryout even though it only has a social club license?

The purpose of this advisory opinion is to provide guidance to applicants, permittees, and the general public about which alcohol permit holders may offer alcoholic beverages for carryout under the scope of its retailer permit for on-premises consumption.

**II. Background**

Following the repeal of Prohibition, the Indiana legislature—like most other states—established a three-tier system to regulate the production, distribution, and sale of alcohol. Under the three-tier system, manufacturers (first tier) sell products to wholesalers (second tier), who may only sell products to retailers (third tier), who sell directly to consumers. In Indiana, there are separate permits for beer, wine, and liquor at each level of the three-tier system.

At the retail level, Indiana distinguishes between retailer permits issued for the consumption of alcoholic beverages on the licensed premises, and dealers permits issued for the consumption of alcoholic beverages off the licensed premises. Perhaps the most common type of retailer permit is issued for a restaurant. Under Indiana law, other retail establishments may also obtain a retailer permit, including fraternal and social clubs, gaming sites, golf courses, hotels, malls, and state parks. However, the eligibility requirements and privileges associated with each type of retailer permit may differ depending on the specific permit type.

**III. Relevant Legal Authority**

The issue or question presented is whether or not a retailer permittee holding a social club permit may give away alcohol to its club members for carryout (i.e., to be consumed off the licensed premises). In this scenario, there are several subject matters under Title 7.1 of the Indiana Code (“Title 7.1”) that may be implicated, including the carryout of alcoholic beverages and price discrimination.

**A. Carryout**

IC 7.1-3-20-9.5 generally authorizes retailer permittees that hold a restaurant<sup>1</sup> permit to sell alcoholic beverages for carryout. However, it also requires that at least sixty percent (60%) of a retailer permittee's

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<sup>1</sup> According to IC 7.1-3-20-9, in order to be considered a "restaurant" for purposes of Title 7.1 and to be eligible to receive a retail restaurant permit, an establishment: 1) must provide space and accommodations where, in consideration of payment, food is habitually furnished to patrons; and 2) must have accommodations for at least twenty-five (25) persons at one time.

gross retail income be derived from the sale of alcoholic beverages for consumption on the licensed premises in order to be eligible for carryout sales.<sup>2</sup> There are exceptions to this general requirement for certain retailer permittees, including city markets, marinas, state parks, hotels and resort hotels, golf courses, and restaurants operated by the holder of a small brewer's permit (issued under IC 7.1-3-2-7(5)), a farm winery permit (issued under IC 7.1-3-12-5), or an artisan distiller's permit (issued under IC 7.1-3-27-8). Although the language of IC 7.1-3-20-9.5 also excludes social and fraternal clubs from the carryout sales requirement, 905 IAC 1-13-3 has long stated that clubs may only be granted alcohol permits for on premises consumption. As such, club permits are ineligible for carryout privileges.

However, there are two exceptions to this general rule related to charitable events. IC 7.1-3-6.1 authorizes a qualified organization<sup>3</sup> that holds a license under IC 4-32.3-4 to give an alcoholic beverage as a prize at an allowable event<sup>4</sup> without obtaining an alcoholic beverage permit under Title 7.1. Similarly, IC 7.1-3-6.2 authorizes a qualified organization to sell an alcoholic beverage at an auction without obtaining an alcoholic beverage permit under Title 7.1 as long as the alcoholic beverage is purchased from a permittee or received as a donation, in sealed bottles or cases, and for off-premises consumption only. In either case, an individual receiving an alcoholic beverage at a charity auction or as a charity gaming prize must be physically present in order to participate in an auction or other allowable event and must be given the alcoholic beverage in person from the qualified organization.

## **B. Price Discrimination**

IC 7.1-5-5-7 generally prohibits permittees from discriminating between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this does not require or authorize a permittee to sell to a person to whom the permittee is not authorized to sell under the scope of its permit. In other words, permittees cannot give preferential treatment to certain purchasers of alcoholic beverages by granting them a special price or discount that is not available to any purchaser at that time.

## **IV. Analysis & Conclusion**

As highlighted above, club permits can be distinguishable from other retail alcohol permits, particularly in terms of carryout sales. Because 905 IAC 1-13-3 states that club permits may only be issued for on-premises consumption of alcoholic beverages, a club permittee may not give away alcohol for carryout or consumption off the licensed premises. The only exceptions to this prohibition are for charity gaming prizes offered in accordance with IC 7.1-3-6.1 and charity auctions held in accordance with IC 7.1-3-6.2. However, nothing prohibits a club permittee from giving its members an alcoholic beverage for consumption on the licensed premises, as long as it does so in a non-discriminatory manner by ensuring compliance with IC 7.1-5-5-7.

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<sup>2</sup> Any information provided to the Commission regarding gross retail income is considered confidential and may not be disclosed to the public under IC 5-14-3.

<sup>3</sup> IC 4-32.3-2-31 defines a "qualified organization" as a bona fide charitable organization, including civic, fraternal, and veteran organizations operating in Indiana that meet certain requirements.

<sup>4</sup> IC 4-32.3-2-2 defines an "allowable event" as: 1) a bingo night, 2) a casino game night; 3) a raffle; 4) a festival; 5) a sale of pull tabs, punchboards, or tip boards; or 6) a gambling activity under IC 4-32.3-4-11, that is conducted by a qualified organization in accordance with this IC 4-32.3 and the rules and regulations of the Commission.

**DISCLAIMER:** Opinions expressed in this advisory opinion are fact-sensitive and based on the 2023 Indiana Code. Advisory opinions are issued to provide information that is consistent with the relevant statutes, rules and court decisions related to a particular topic or question. Any information that is not consistent with the laws, rules, or regulations is not binding on either the Commission or the public.