



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Texans Helping Businesses & Protecting Communities

P.O. Box 13127
Austin, Texas 78711-3127
(512) 206-3333
www.tabc.texas.gov

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MARKETING PRACTICES ADVISORY – MPA026

Certain Nonprofit Entities Serving Alcoholic Beverages at Temporary Events

To: All Industry Members and Nonprofit Entities

Scope of the Advisory

This advisory is intended to provide clarification for civic, religious, political, and charitable organizations that would like to serve or sell alcoholic beverages at a temporary event. This advisory also incorporates recent amendments to TABC's Administrative Rules 33.78 (Nonprofit Entity Temporary Events) and 33.79 (Serving Alcoholic Beverages at Fundraising Events) and provides options for conducting temporary events that comply with the requirements under the Code and the amended rules.

Option One: Serving "Free" Alcoholic Beverages

TABC Rule 33.79(b)-(c) addresses nonprofit entities providing alcoholic beverages at fundraising events held by or benefitting charitable, religious, political, and civic organizations. Under the rule, nonprofit entities are authorized to provide alcoholic beverages free of charge without first obtaining a Nonprofit Entity Temporary Event Permit (NT). To be truly "free" alcoholic beverages must be available to any adult who is legally qualified to consume alcohol.

The following non-exhaustive list of allowances and restrictions apply under this scenario:

- The nonprofit entity may receive product and/or cash donations from license or permit holders.
- The nonprofit entity may serve donated alcoholic beverages.
- The nonprofit entity may enter into sponsorship or underwriting agreements with members of the alcoholic beverage industry, including agreements for advertising, signage, and product exclusivity.
- The nonprofit entity may pick up the donated product from an upper-tier member's premise.
- The nonprofit entity may hire an independent holder of a Carrier's Permit to pick up and deliver the donated product.
- Upper-tier members may not serve products at the event.
- Upper-tier members may not attend the event for the purpose of promoting their products.

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- Upper-tier members may not pass out novelty items to consumers at the event.
- Upper-tier members may not deliver donated products to the unlicensed event.

The nonprofit entity may offer free alcoholic beverages to individuals that are at least 21 years of age and not intoxicated. Entry into the event may not be conditioned on a donation or fee. See TABC Rule 33.79(b). When alcoholic beverages are provided without temporary authorization, there cannot be any expectation of receiving money. The nonprofit entity and the event servers may not ask for a "donation" or "tip" or otherwise receive money in exchange for the alcoholic beverages served at the event.

Option Two: Selling Alcoholic Beverages at Temporary Events

In accordance with TABC Rule 33.78 (Nonprofit Entity Temporary Events), a nonprofit entity may be issued a Nonprofit Entity Temporary Event Permit (NT) to sell alcoholic beverages at a temporary event. Nonprofit entities qualify for an NT permit if the entity is a nonprofit corporation; a nonprofit charitable civic, or religious organization; a political party or association supporting a candidate for public office or some ballot measure; a fraternal organization; or certain persons governed by Chapter 254 of the Texas Election Code. See Code § 30.01.

Once the NT is obtained, all alcoholic beverages must be purchased from an authorized source and may be sold at the event. The nonprofit entity may not sell alcoholic beverages that have been donated. The nonprofit entity is permitted to accept cash donations from persons in the alcoholic beverage industry (or anyone else) and these donations may be used solely at the nonprofit entity's discretion.

Nonprofit entities who obtain a temporary authorization must adhere to the following non-exhaustive list of restrictions:

- Cash donations must be provided with "no strings attached" (*i.e.* donations may not be contingent upon the retailer using the funds in a specific manner or to purchase specific types or brands of alcohol, and the nonprofit entity must have full discretion on how the cash donation is spent).
- No written or unwritten agreement or understanding between the nonprofit entity and the upper-tier industry member may exist regarding anything being received in exchange for the donation.
- No written or unwritten agreement or understanding between the nonprofit entity and the upper-tier industry member as to which alcoholic beverage products the nonprofit entity will sell after obtaining their temporary authorization.
- The nonprofit entity may not enter into a written, unwritten agreement, or understanding regarding "sponsorship" rights, including signage or advertising.

Option Three: Partner with an Independent Third-Party Retailer

The nonprofit entity may hire a third party who holds a retail-tier permit or partner with a second nonprofit entity who obtains a temporary authorization to sell alcoholic beverages at a temporary event. Under this scenario, the nonprofit entity may receive cash or in-kind donations from manufacturers, wholesalers, or retailers. However, the permit to sell alcoholic beverages at the event must be held by a retailer who is independent of the sponsors. The retail-tier permit holder may not receive any direct benefit or service because of a wholesaler's or manufacturer's event sponsorship. See Code §§ 102.07 (liquor), 102.15 (malt beverages) and 109.58.

The following non-exhaustive list of allowances and restrictions apply under this scenario:

- The independent third-party retailer may enter into a written or unwritten agreement with the nonprofit entity whereby a portion of the gross proceeds may be donated or paid to the nonprofit entity. Gross proceeds may include the following:
 - Ticket sales
 - Memorabilia
 - Entertainment
- The nonprofit entity's name must also appear on advertising associated with the temporary event if the advertising includes the name of the retailer hosting the event to avoid providing a prohibited benefit to the retailer.
- The nonprofit entity may hire an unlicensed organizer or promoter to manage a temporary event. The organizer or promoter may conduct but is not limited to, the following practices.
 - Manage event operations
 - Negotiate contracts and agreements with the third-party retailer
 - Hire entertainment
 - Engage sponsorship agreements
- The nonprofit entity and the event organizer or promoter may not exchange gifts or donations for exclusive product rights. The independent retailer must retain the right to control the quantity and/or selection of brands of alcoholic beverages bought or sold by the independent retailer.
- Manufacturers, wholesalers, and retailers may not coerce, persuade, or induce the nonprofit entity and the event organizer or promoter to persuade the independent retailer to engage in activities that are prohibited by other provisions of the Code.

Statement From TABC

This advisory is issued pursuant to Alcoholic Beverage Code § 5.57. It represents the opinion of the staff of the Commission. We hope this opinion will assist you in your endeavors. If you would like additional information or have questions regarding this Advisory, you may contact me in writing at P.O. Box 13127, Austin, TX 78711; by email to advisories@tabc.texas.gov; or by phone at 512-206-3411.

Sincerely,



Thomas Graham
Director of Tax & Marketing Practices