



John T. Steen, Jr.
Chairman - San Antonio

Gail Madden
Member - Dallas

Jose Cuevas, Jr.
Member - Midland

Alan Steen *Administrator*

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MARKETING PRACTICES BULLETIN – MPB 019
Private Club Advertisement

To: Alcoholic Beverage Industry

This bulletin is intended to clarify statutory and common practices related to outdoor advertising by a holder of private club permit or a private club exemption certificate. We have been presented with an inquiry from the industry relating to acceptable methods of advertisement in a partially wet area.

At issue is a partially wet area, wet for off premise liquor sales (package stores), and wet for on/off premise wine and beer sales, dry for on-premise distilled spirits sales or service. A holder of a private club permit for service of alcohol, in the partially wet area, placed on his marquee in front of the establishment, the following phrase "Happy Hour Margarita Specials 5:00 pm to 9:00 pm., service for private club members." Of particular question is whether a [private club](#) may use the word [margarita on its marquee advertisement](#) in a partially wet area.

Invariably, statutory provisions found in Section 108.56 of the alcoholic beverage code place restrictions on outdoor advertisement in a dry area. Pursuant to 16 TAC 45.105, the holder of any permit allowing the sale or [service](#) of mixed beverages may not advertise any prices which may be seen from the street on any sign, billboard, marquee or any other display on or outside of the building or which may be seen from outside of the building. Further, 16 TAC 45.107 states that the holder of a private club registration permit or a private club exemption certificate, in any advertisement either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, must state that the service of alcoholic beverages is **only** for persons who are members of the club.

Of importance here is to note that once an area is voted wet for a particular class of alcoholic beverages (e.g. distilled spirits), regardless of whether limited to off or on premises, it opens the door for advertisement for that class of beverage in that area provided no other provisions of the code are violated.

In summary, a holder of any permit allowing the sale or service of mixed beverages may advertise the class of beverage authorized for sale in the precinct, city or county, whichever is applicable, provided no other provisions of the code or rules are violated. If a private club, the permit holder must adhere to both 16 TAC 45.105 and 16 TAC 45.107. Relating to the preceding scenario, the word margarita may be used in the advertisement, considering the area is wet for that class of beverage.

[An unacceptable form of advertisement based on the scenario as provided above, would be "Happy Hour Half Price or \\$ 2.00 Margaritas 5:00 p.m. to 9:00 p.m., service for private club members only." \(Half price or \\$2.00 would have to be removed from the advertisement\).](#)

Now in contrast, if the area was completely dry, no private club or other permit holder may advertise the sale or service of alcohol from any billboard, sign, marquee or other display seen from outside of the building except through printed material such as newspapers, magazines or other printed publications.

This opinion is of the staff of the Commission, and it should be noted that any permittee/licensee may pursue a different opinion through administrative proceedings with the State Office of Administrative Hearings. We hope this opinion will assist you in your promotional endeavors. Please feel free to contact us at any time should other questions arise. We will monitor these events and make necessary regulatory changes as applicable. If you would like additional information or have questions regarding this bulletin, you may contact me in writing at P.O. Box 13127, Austin, TX 78711, by email at marketing.practices@tabc.state.tx.us, by phone at 512-206-3411 or by facsimile at 512-206-3203.

Kind Regards,

A handwritten signature in blue ink that reads "Dexter K. Jones". The signature is fluid and cursive, with the first name being the most prominent.

Dexter K. Jones
Director of Marketing Practices

CC: Alan Steen, Administrator
Jeannene Fox, Assistant Administrator
Executive Management
Regional Personnel