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ALCOHOLIC BEVERAGE CONTROL

PUBLIC PROTECTION CABINET
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ABC ADVISORY OPINION 2020-001

September 4, 2020

Question:	"Does the Yard Bar, LLC constitute an "entertainment facility" exempted under K.R.S. Section 244.085(5)(a) from the general prohibition of K.R.S. Section 244.085(5) preventing persons under the age of 21 from visiting and remaining upon a premises licensed to sell alcoholic beverages?"[1]
Requested by:	Robert Hassman, Jr. Attorney, Doyle & Hassman On behalf of Yard Bar, LLC
Syllabus:	"Entertainment facility" means "a business an establishment licensed to sell or serve alcoholic beverages at retail, characterized by providing amusements or diversions—especially performances—that are appropriate for persons under the age of 21 to attend or engage in, and whose operations allow it to adequately monitor and prevent the sale of alcoholic beverages to minors."
Statutes construed:	KRS 244.085(5)(a)
Legal authority:	KRS 446.080(1) & (4); *St. Clair v. Commonwealth*, 140 S.W.3d 510 (Ky. 2004); *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009); *Lewis v. Jackson Energy Co-op, Corp.*, 189 S.W.3d 87, 92 (Ky. 2005); *Commonwealth v. Phon*, 17 S.W.3d 106, 108 (Ky. 2000)

[1] This Advisory Opinion Request ("Request") was submitted under the process outlined in 804 KAR 6:020. The Department has deemed this Request issuable under 804 KAR 6:020, Section 2(1) as it "concerns the application and interpretation of alcoholic beverage control statutes and administrative regulations with regard to a particular act or transaction that the requestor is taking or plans to take," namely permitting minors on a licensed premises with the assumption that it is an "entertainment facility" under KRS 244.085(5)(a).

Opinion of the Department of Alcoholic Beverage Control

Businesses licensed to sell alcoholic beverages by the drink or in packages are generally prohibited from permitting persons under the age of twenty-one (21) to enter or remain on the licensed premises. See KRS 244.085. However, certain establishments are excepted from this prohibition under KRS 244.085(5)(a):

> The usual and customary business of the licensee is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm winery, distillery, brewery, winery, convenience store, grocery store, drug store, entertainment destination center, licensed APC premises, live music or other entertainment or public facility, or any other business type, as determined by the board through the promulgation of administrative regulations, whose operations allow it to adequately monitor and prevent alcohol sales to minors.

The exceptions to the general prohibition against minors entering or remaining on premises licensed to sell and serve alcoholic beverages are numerous, but are still limited. So, to answer the Request, the Department must first answer an important question: What constitutes an "entertainment facility" for the purposes of determining whether minors may be allowed to enter or remain on an establishment's premises under KRS 244.085(5)(a)?

Prior to amendment by the General Assembly this year in SB 99, KRS 244.085(5)(a) did not include "live music or other entertainment or public facility" among the enumerated excepted business types in KRS 244.085(5)(a). See Ky. Laws Ch. 102, SB 99 (effective July 15, 2020). Rather, "entertainment facility" was included as an exception in a now-repealed subsection of KRS 244.085(5), which permitted minors to remain on the premises of an "entertainment facility" described in relevant part as follows:

> (d) The usual and customary business of the establishment is an entertainment facility where prebooked concerts are held. For the purpose of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this paragraph, the licensee shall:
> 1. Maintain the responsibility of all ticket sales;
> 2. Sell the concert tickets directly to the patron or have a contractual agreement with a vendor or promoter to sell the concert tickets for the licensee;

3. Maintain records of all gross concert ticket sales. The concert tickets shall have the name of a band or performer as well as the date of the concert;
4. Permit minors to be in the area where the concert is taking place only during the time of the concert; and
5. Prohibit minors on the premises until thirty (30) minutes prior to the concert and prohibit minors from remaining on the premises more than thirty (30) minutes after the concert performance has ended.

KRS 244.085(5)(d) (2019)(prior to 2020 amendment).

Under this previous statute, "entertainment facility" was defined in reference to establishments "where prebooked concerts are held," and "concerts" did not include house bands, disc jockeys or karaoke. *Id.* Additionally, minors were permitted only "in the area where the concert is taking place … during the time of the concert" and only permitted on the premises at all only for the span of time between 30 minutes before and after the concert. *Id.* With the 2020 amendment, however, all of those restrictions were repealed and "entertainment facility" remains in KRS 244.085 without guidance as to its definition. *See* KRS 244.085. Indeed, no definition of "entertainment facility" was added to the statutory definitions for alcoholic beverage laws (Chapters 241 to 244 of the Kentucky Revised Statutes) under KRS 241.010. The Department is thus left to determine the definition of "entertainment facility" using canons of statutory construction.

"[T]he cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect." *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009); see also KRS 446.080(1) ("All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature."). Though the 2020 amendment broadened the range of businesses licensed to sell or serve alcoholic beverages that may permit minors to enter or remain on their premises, the General Assembly clearly intended that the exceptions to the general prohibition under KRS 244.085(5)(a) remain limited, or else it would have repealed the entire statute.

Statutes should also "be construed in such a way that they do not become meaningless or ineffectual." *Commonwealth v. Phon*, 17 S.W.3d 106, 108 (Ky. 2000). However, without a

definition, "entertainment facility" may be broad enough to swallow any objection so long as an establishment can argue that patrons are entertained on its premises. Defining "entertainment facility" is therefore necessary to further the Department's public protection mission and goals of impartial, reasonable, and fair enforcement.

Further divining the legislative intent is difficult, but the Department is guided by the statutory framework as a whole to determine whether context may inform the definition of "entertainment facility." *See Lewis v. Jackson Energy Co-op, Corp.*, 189 S.W.3d 87, 92 (Ky. 2005). The general prohibition against permitting minors on licensed premises stems from the proscription against selling alcohol to minors, *see* KRS 244.080 and 244.650(2), informs requirements to obtain licenses, *see e.g.* AOR 2019-001, and places restrictions on who alcoholic beverage licensees may employ, *see* KRS 244.090(c). KRS 244.085(5)(a) permits the Department to promulgate rules appending to the list of establishments excepted from the general prohibition based upon the Board's determination that the establishment can "adequately monitor and prevent alcohol sales to minors." Therefore, the Department presumes that whatever the General Assembly intended an "entertainment facility" to be, it must be an establishment that has the will and the capacity to prevent minors from purchasing alcohol.

Additionally, reviewing the enumerated exceptions, all of them provide some sort of service or goods other than the sale or service of alcoholic beverages. *See* KRS 244.085(5)(a). Therefore, the definition of "entertainment facility" should be limited to business establishments that provide services or goods which would warrant the presence of minors on their premises. If an establishment does not provide services or goods that warrant the presence of minors on its premises, then there is no reason for minors to be permitted to enter or remain unaccompanied on the premises.

The final clue into the definition of "entertainment facility" is the phrase itself. "All words and phrases shall be construed according to the common and approved usage of language." KRS 446.080(4); see also *St. Clair v. Commonwealth*, 140 S.W.3d 510, 570-1 (Ky.

2004). The word "entertainment" describes a "facility" in only three statutes in the KRS: KRS 148.851, KRS 177.076, and KRS 244.085. While two of these are definition statutes, none of them defines "entertainment facility." Turning to the dictionary, "entertainment" is defined as "amusement or diversion provided especially by performers" or "something diverting or engaging, such as a public performance [or] a usually light comic or adventure novel."[2]

Putting all of these criteria together, the Department defines an "entertainment facility" under KRS 244.085(5)(a) as an establishment licensed to sell or serve alcoholic beverages at retail, characterized by providing amusements or diversions—especially performances—that are appropriate for persons under the age of 21 to attend or engage in, and whose operations allow it to adequately monitor and prevent the sale of alcoholic beverages to minors.

Having defined "entertainment facility," the Department can turn to the Requestor's inquiry regarding whether the establishment described in his clients' plan for Yard Bar, LLC, meets this definition. According to the Request, Yard Bar, LLC is "designed to provide the feel of a backyard for urban patrons." As conceived, the proprietors hope that it "will serve as a place where … residents can come and go to congregate for cookouts, graduation parties, birthday parties, and to otherwise visit with friends and neighbors. In essence, the Premises will serve as the neighborhood's communal backyard for entertainment purposes." To that end, the establishment will have "many entertainment offerings, including family-oriented gathering areas, outdoor games, and gaming areas, picnic tables and dining options" which they state make it "more akin to a park or recreational venue than a traditional bar or restaurant." The Request also states that contracts with food vendors are a "large part of the business plan," making the presence of minors and children necessary for the business to "generate enough revenue to sustain operations."

[2] "Entertainment." *Merriam-Webster.com*, 2020, *available at* https://www.merriam-webster.com/dictionary/entertainment (last accessed Sept. 2, 2020).

As described, the Department has determined that the operations of Yard Bar, LLC meet the criteria to be an "entertainment facility." As illustrated in the renderings attached to the Request, the premises is open to the air and very much resembles an urban park or fair, which are enumerated businesses under KRS 244.085(5)(a). The various gaming and family-oriented spaces provide ample amusements and diversions appropriate for persons not yet old enough to purchase alcoholic beverages. Moreover, while alcoholic beverages are served on the premises, alcoholic beverages are sold from a single bar and the food vendors do not serve alcoholic beverages, limiting minors' opportunity to purchase alcohol.

Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control