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ABC ADVISORY OPINION 2022-003

August 22, 2022

Question:	Does the Entertainment Destination Center (EDC) License allow patrons to leave a licensed premises and consume alcoholic beverages in unlicensed premises?
Requested by:	Bridgette Lester, Director of Codes Enforcement/ABC Administrator City of Danville
Syllabus:	The EDC license does not permit alcoholic beverages to be drunk on the premises of unlicensed businesses.
Statutes construed:	KRS 243.020(3) (and 804 KAR 4:370)
Legal authority:	KRS 241.060, 243.020, 804 KAR 4:370

Opinion of the Department of Alcoholic Beverage Control

The Department received a request for an advisory opinion asking whether the Entertainment Destination Center (EDC) license allows patrons of licensees within an EDC to leave a licensed premises or common area of the EDC and enter business premises that are not licensed for alcoholic beverage consumption. For the reasons outlined below, the Department must say it does not.

The EDC license was created by regulation, 804 KAR 4:370, in 2003, under the Board's power in KRS 243.030 to issue special licenses. The purpose of the EDC license was to create a public space among retail alcoholic beverage licensees where their patrons could be served and

consume their alcoholic beverages. This is achieved by 804 KAR 4:370, Section 4(1), which permits "a licensee located in or adjacent to the EDC" to "allow patrons to leave its premises with alcoholic beverage drinks and consume those drinks at other licensed premises or any EDC common area" under certain circumstances. This distinguishes "licensed premises" and the "EDC common area" as separate spaces. The Department interprets this distinction to mean that premises not owned by the EDC licensee are not considered part of the EDC common area; however, the regulation explicitly permits consumption of alcoholic beverages within those licensed premises.

The regulation does not mention non-licensed premises, but, turning to statute, KRS 243.020(3) states that "a person, conducting a place of business patronized by the public, who is not a licensee authorized to sell alcoholic beverages, shall not permit any person to sell, barter, loan, give away, or drink alcoholic beverages on the premises of the place of business." There are some exceptions to this but none of them apply here. So, statutorily, non-licensed premises within or without an EDC are prohibited from allowing any drinking on their premises.

It is here that the Department would ordinarily state that it "may not seek to amend, alter, enlarge, or limit terms of legislative enactment" by regulation. *Ruby Const. Co., Inc. v. Dept. of Revenue*, 578 S.W.2d 248, 252 (Ky. App 1978). Due to the statutory proscription against drinking in premises that lack licenses to sell alcoholic beverages, the Department is unable to interpret or amend 804 KAR 4:370 to permit such conduct on premises without licenses.

That said, a part of the very purpose of 804 KAR 4:370 is also directly prohibited by the same statute. KRS 243.020(4) states, "A licensee shall not permit any consumer to possess, give away, or drink alcoholic beverages on the licensed premises that are not purchased from the licensee." There is no statutory exception for EDC licensees. However, there is a distinction. When 804 KAR 4:370 was originally promulgated in 2003, it authorized the possession of alcoholic beverage drinks on licensed premises which were not purchased on that premises:

> On Thursday, Friday, and Saturday of each week, between the hours of 6:00 p.m. and up to 4:00 a.m., and during any other days and times as the owner or lessee of the entertainment destination center may determine, a licensee

> within the entertainment destination center may permit patrons to leave the individually licensed premises with an alcoholic beverage drink and enter other licensed premises and the common areas of the center.

804 KAR 4:370 Section 4(1) (eff. 2003). At the time, it was still illegal to bring alcoholic beverages onto unlicensed premises, but it was not illegal under statute to bring alcoholic beverages to another licensed premises. In 2004, the legislature passed 2004 Kentucky Laws Chapter 20 (HB 466), which added the EDC license to the list of licenses under KRS 243.030; the EDC license regulation still defined the license as it continues today. It was not until 2017 that this was made illegal, after the passage of 2017 Ky Laws Ch. 62 (HB 183), which amended KRS 243.020 and added subsection 4. The Department therefore interprets that the authorizations of the EDC license regarding drinking alcoholic beverages in communal spaces and bringing alcoholic beverage drinks from one licensed premises to another are essentially grandfathered practices. However, no such analog existed in the law for bringing alcoholic beverage drinks purchased from a retail drink premises within or adjacent to an EDC into unlicensed premises within the EDC previous to 2017. Unfortunately, this means that the practice of bringing alcoholic beverage drinks onto an unlicensed business premises within an EDC is currently prohibited.

CONCLUSION

The Requester asked whether the entertainment destination center (EDC) license permits patrons of licensed premises within the EDC to take alcoholic beverage drinks from licensed premises or the EDC's communal space and into unlicensed premises. While KRS 243.020 prohibits bringing either alcoholic beverage drinks both from licensed premises onto other licensed premises and from licensed premises onto unlicensed premises, the former is permitted by the EDC license, which the legislature has tacitly permitted, while the latter is not. Permitting alcoholic beverages to be brought on unlicensed premises within an EDC will require a legislative change to KRS 243.020(3). For the sake of clarity, the Department believes EDC licenses should also be excepted from KRS 243.020(4).

Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control