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ABC ADVISORY OPINION 2022-004

November 18, 2022

- Question:** Is the Bark Park & Patio LLC, a Quota Retail Drink and NQ4 Retail Malt Beverage Drink licensee operating as a dog park, exempt from the prohibition of minors on a licensed premises under KRS 244.085 as an entertainment facility?
- Requested by:** The Bark Park & Patio LLC, *via counsel*
Hon. Matthew D. Dusing
Dusing Law, PLLC
800 Monmouth Street
Newport, KY 41071
- Syllabus:** The Bark Park & Patio LLC is exempt from the prohibition of minors on a licensed premises under KRS 244.085 as an entertainment facility.
- Statutes construed:** KRS 244.085(5)
- Legal authority:** KRS 241.020, KRS 244.085, 804 KAR 6:020

Opinion of the Department of Alcoholic Beverage Control

The Department received a request for an advisory opinion asking whether the Bark Park & Patio LLC (“Bark Park”), a quota retail drink and NQ4 retail malt beverage drink licensee operating as a private dog park, is exempt as an entertainment facility from the prohibition against minors remaining on a licensed premises under KRS 244.085(5). KRS 244.085 generally prohibits minors from remaining on licensed premises but enumerates myriad kinds of licensed businesses to which this general prohibition does not apply. Most of these licensed businesses are not defined

in KRS Chapters 241 to 244, but fall easily within the canon of statutory construction made law in KRS 446.080(4), “All words and phrases shall be construed according to the common and approved usage of language.” However, “entertainment facility” does not, and while KRS 244.085 formerly contained language which provided some guidance as to what was meant, it was amended in 2020 to remove that language. See 2020 Kentucky Acts Ch. 102 (SB 99), § 19.

It was with this in mind that the Department issued AOR 2020-001 regarding Yard Bar. In that advisory opinion, the Department interpreted “entertainment facility” as follows:

[T]he 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.

See ABC Advisory Opinion 2020-001, p 5 (September 4, 2020). Yard Bar, LLC was “designed to provide the feel of a backyard for urban patrons” that “would 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.” *Id.* For amenities, Yard Bar, LLC offered “many entertainment offerings, including family-oriented gathering areas, outdoor games, and gaming areas, picnic tables and dining options,” the latter by way of contracts with food trucks or food vendors. *Id.* Finally, “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[sic] to purchase alcohol.” *Id.* at 6. The Department found that this licensed business met the newly minted definition of “entertainment facility.”

Bark Park states that its “primary purpose” is to operate as a local dog park and will also host dog adoption events and dog training events. Request at 1. Additionally, Bark Park plans to offer food from vendors like “food trucks who lease space from Bark Park or permanent food vendors who will be located in designated spaces in its lot.” *Id.* The Department acknowledges

that dog ownership “is not limited to persons 21 years of age or older” and operating primarily as a dog park, the Department finds that the first part of the definition of “entertainment facility” is met—i.e. Bark Park’s business model is “characterized by providing amusements or diversions—especially performances—that are appropriate for persons under the age of 21 to attend or engage in.” In this case, providing a space for people to bring their dogs, congregate and socialize, is a diversion or amusement that is appropriate for all ages.

Moving to the second part of the definition, Bark Park’s operations must also “allow it to adequately monitor and prevent the sale of alcoholic beverages to minors.” To that end, Bark Park asserts that it will

be able to control the purchase of alcoholic beverages to those 21 years of age or older. Only those 21 years of age or older, who have provided identification to Bark Park staff, will be given a specific Bark Park card that is controlled and can be turned off by Bark Park to use Bark Park’s self serve tap. The taps do not operate without prior authorization and without the card controlled by Bark Park. Bark Park has full control over its alcohol and is in a position to ensure no one under 21 purchases alcohol or has access to alcohol directly from Bark Park’s taps.

Request at 1-2. Bark Park further clarifies that alcoholic beverages will be “served from a single bar and only patrons who have checked in with Bark Park staff and have been given a special card indicating they are at least 21 years of age can purchase alcohol.” *Id.* at 2. And finally, Bark Park asserts that staff patrol[] the park and ensur[e] the safety of guests and dogs.” *Id.* Provided that Bark Park has a single bar, mandatory age verification, and staff patrolling the park who can ensure that minors are not drinking alcoholic beverages, the Department finds that Bark Park’s “operations allow it to adequately monitor and prevent the sale of alcoholic beverages to minors” sufficient for the second part of the definition.

For the aforementioned reasons, the Department determines that the operations of Bark Park & Patio, LLC, meet the criteria to be an “entertainment facility” and Bark Park is exempt from the general prohibition against minors being allowed to remain on the licensed premises.



Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control