

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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December 4, 2020

The Honorable Candie G. Sweetser  
State Representative – District 32  
10520 Hermanas Road SW  
Deming, NM 88030

**Re: Opinion Request – Application of the New Mexico Liquor Control Act to a Private Function where Liquor is Served**

Dear Representative Sweetser:

You requested our advice regarding the applicability of the Liquor Control Act, NMSA 1978, Section 60-3A-1 to -7B-13, (1981, as amended through 2015) (the “Act”), to a private event sponsored by a chamber of commerce.<sup>1</sup> We understand that the planned event will be held on the premises of a business that will be closed to the public for the event and liquor will be served to invited guests at no charge. Specifically, you inquired: 1) whether a person, not a licensee under the Act, violates the law by serving alcoholic beverages to invited guests; and 2) whether a chamber of commerce or its members violate any provisions of the law if they facilitate or attend the event in question? In other words, does the host of a private event where liquor is served need to obtain a license from the Alcohol and Gaming Division? Based on our examination of the relevant New Mexico statutes and regulations discussed below, we conclude that no license is required for such an event and the hosts of an event like the one described may serve alcoholic beverages to invited guests without violating the Liquor Control Act. In addition, members of the chamber of commerce and other persons may attend such an event without running afoul of the Act.

As a preliminary matter, we limit our analysis and discussion to the hypothetical situation you provided and do not address potential tort liability for overserving guests. We begin by noting that the Act regulates the manufacture, wholesale distribution, and retail sales of alcoholic beverages in the State through a comprehensive licensing scheme of businesses, premises and individuals authorized to sell or serve alcohol to the public. There is no licensure provision in the Act pertaining to private parties, but regulations adopted by the

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<sup>1</sup> Your request for an opinion on the matters discussed herein pre-dated the current state of public health emergency. At this time, we are presupposing that any private event held by a chamber of commerce will be held as permitted by and in compliance with the New Mexico Department of Health’s public health orders then in effect.

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New Mexico Alcohol and Gaming Division (hereafter “AGD”) define a “private party” to “mean[ ] an event open only to invited guests and not open or advertised to the general public [and] does not include alcohol industry promotional events or other events with a commercial purpose.” 15.10.2.7 (AA) NMAC.

Accordingly, a chamber of commerce and its guests would not be in violation of the Act if the event is held in accordance with AGD’s definition of a private party by: 1) maintaining a list of invited guests, and denying entry to those not on the list; 2) not advertising the event to the general public; and 3) avoiding activities that would indicate the event is being held for a commercial purpose. Though AGD’s regulations do not contain a definition of “commercial purpose,” conduct that would be indicative of a commercial purpose include: selling tickets to the event that include a free drink, charging guests for alcoholic beverages, or selling other goods or services at the event, such as membership in a chamber.

The above analysis also applies to the business where the event will be located. Again, the central question in determining whether the business hosting the event would be in violation of the Liquor Control Act, is whether the event meets the definition of a private party that does not have a commercial purpose. To meet these requirements, the business should be closed to the general public during the event; only permit invited guests entry; and to avoid any question of whether the event is for a commercial purpose, forgo accepting or charging a fee to the chamber of commerce for hosting the event. As a note of caution, straying from the definition of a private party could result in an administrative fines under 15.10.61.8 (K) NMAC ranging from five hundred dollars to five thousand dollars.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,



Sally Malavé  
Director, Open Government Division