



Advisory Opinion 19-01: Retail Permits within Grocery Stores

1. Background

BB Fish LLC is a franchised restaurant located in Noblesville, Indiana. There are two other businesses co-located in the same building – Broccoli Bill’s Grocery store and an independently-owned bakery and tea shop. BB Fish LLC is applying for a Type 112 Beer, Wine retailer permit. BB Fish LLC is not applying for carryout privileges under IC 7.1-3-20-9.5.

The property is owned by William Weghorst, who is an owner of both BB Fish LLC and Broccoli Bill’s.

BB Fish LLC is the only establishment which will hold an alcoholic beverage license and all alcohol will be dispensed and served by BB Fish LLC employees. Alcohol will only be served in the seating inside BB Fish LLC and on the sunporch and deck, adjacent to the restaurant area. There is no seating within Broccoli Bill’s or the bakery. Patrons purchasing food from BB Fish LLC would need to sit within BB Fish LLC.

The BB Fish LLC meets the requirements for a restaurant pursuant to 7.1-3-20-9.

2. Retail permits within grocery stores

7.1-5-10-24 states that states that individuals who have an interest in both a grocery store permit with a dealer’s permit and a retailer’s permit where the licensed premises of the grocery store and the restaurant are in the same building “must be completely separated by a wall and have separate entrances.”

BB Fish LLC and Broccoli Bill’s are owned by the same individual and located within the same building, but because Broccoli Bill’s does not hold a dealer permit, this statute does not apply. Therefore, there does not have to be complete separation or separate entrances between Broccoli Bill’s grocery store and BB Fish LLC.

7.1-3-1-1.5 addresses the intent of the Indiana General Assembly with regards to carryout. The statute states that a grocery store, convenience store or drug store should not be given the privilege of selling cold beer for carry out and restaurants located within a grocery store, convenience store or drug store should not be given the privilege of selling alcohol for carryout.

Additionally, 7.1-5-10-25 prohibits individuals who own both a grocery store dealer permit and a retail permit within the same building from selling alcohol for carryout



from the licensed premises of the restaurant. BB Fish LLC is not requesting carryout privileges from their location, so this prohibition is moot. However, because Broccoli Bill's does not hold a dealer permit, said prohibition would not apply.

3. Retail permits with multiple vendors

Applicant for this advisory opinion cites to the Sun King Brewing Company location in Carmel, Indiana stating, "the Commission has allowed independent food vendors to sell food inside Permit Premises."

The Alcohol and Tobacco Commission has approved floorplans where an independent "vendor" serving food is in the vicinity of the permit premises, however, for purposes of 905 IAC 1-41-2, the "vendors" food sales could not count towards the required minimum food sales necessary to qualify for limited separation.

In this case, should BB Fish LLC want to allow minors onto the permit premises, only food sold on its permit premises can count towards its annual required food sales to qualify for limited separation.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2019 Indiana Code.