



## **Advisory Opinion 19-08: Permissible Containers for the Purpose of Carry Out**

### **I. Background**

The following question was posed to the Alcohol and Tobacco Commission:

1. A request to the Commission to clarify what are permissible containers for the sale of carryout liquor by a 210 retail permit holder.

Requestor provides an example of allowing for the carryout of a margarita if the margarita is poured from a machine into a container and the container is closed.

### **II. Analysis & Conclusion**

The phrase “permissible container” appears 13 times throughout Title 7.1 of the Indiana Code when describing how different types of alcohol can be moved through the three-tier system, however it is not defined, so our analysis of the term is based on how it is used throughout the statute.

The scope of a beer retailer permit allows for the permit holder to deliver and sell for on-premises consumption, beer in permissible containers (IC 7.1-3-4-6(a)), and sell beer in commercial containers for carryout (IC 7.1-3-4-6(c)). There is a distinction between commercial containers, which we read as its original container, and permissible containers for purposes of on-premises consumption and carry-out of beer.

In the case of beer retailers, “permissible” is broad, allowing for the holder of beer retailer permits to serve beer from a tap for on-premises consumption. However, beer retailers are limited to selling only beer “in barrels or other commercial containers” for carry-out.

The scope of a liquor retailer permit in IC 7.1-3-9-9(a) allows for a liquor retail permittee to “sell liquor to a customer and deliver it in permissible containers to the customer on the licensed premises, or to the customer’s house.” IC 7.1-3-9-9(c) allows for a liquor retailer permittee to sell liquor for carryout but is silent as to the container.

However, IC 7.1-5-3-2 states, “Except as provided in section 6 of this chapter, it is unlawful for a person to sell, dispense, give away, furnish or supply or serve to a person, an alcoholic beverage, from a container other than the original container in which the liquor was contained at the time it was purchased by the seller, dispenser, giver or person serving it.” Section 6, referenced above, states “the provisions of this chapter shall not prohibit the *service* of a mixed drink from the vessel in which it was prepared.” Emphasis added. The



use of the word “service” in IC 7.1-5-3-6 indicates this statute is intended for mixed drinks for on-premises consumption.

Further, the scope of a wine retailer’s permit in IC 7.1-3-14-4 allows for the holder of a wine retailer’s permit to “sell wine to a customer and deliver it in permissible containers to the customer on the licensed premises or to the customer’s house” and “is entitled to sell and deliver wine for carryout, or for at-home delivery.” The reference to selling wine for carryout does not contemplate the container. However, 7.1-3-20-9.6 gives wine retailers specific authority to allow a customer to remove a bottle of wine that was opened at the premises with a purchased meal. There is no such provision allowing a liquor retailer to sell mixed drinks for carry-out.

It is the position of the Commission that a reasonable interpretation of the word permissible, for purposes of carry-out, is the original container of the alcoholic beverage.

**DISCLAIMER:** Opinions expressed in this advisory opinion are fact-sensitive and based on the 2019 Indiana Code. Every advisory opinion is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Commission or the public.