



Advisory Opinion 19-07: Alcohol Delivery by a Beer, Wine & Liquor Dealer

I. Background

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

1. Is it permissible for the holder of a beer, wine and liquor dealer permittee to contract with a specified and designated company to fulfill deliveries if said company fulfills the following:
 - a. Company is contracted directly by the holder of the dealer license as a contracted employee to fulfill the dealer license holder's delivery orders in a safe and responsible manner;
 - b. Company maintains all the same requirements when it comes to delivering alcohol as the license holder;
 - c. Company maintains detailed and organized records for all completed deliveries along with proof of age verification;
 - d. Anyone directly involved with the delivery as and maintains valid and up-to-date licensing for alcohol handling.

II. Analysis & Conclusion

Indiana Code 7.1-3-1-17 gives the Indiana Alcohol and Tobacco Commission express authority to regulate the "traffic and transportation of alcohol and alcoholic beverages for the sale within this state."

The authority for the holder of a liquor dealer permit to deliver alcoholic beverages to a customer's home, residence or designated location is found in IC 7.1-3-10-7. The scope of a liquor dealer's permit allows a liquor dealer to "deliver liquor only in permissible containers to a customer's residence or office in a quantity that does not exceed twelve (12) quarts at any one (1) time. However, a liquor dealer who is licensed under IC 7.1-3-10-4 may deliver liquor in permissible containers to a customer's residence, office or designated location. This delivery may only be performed by the *permit holder* or an *employee* who holds an employee permit." Emphasis added.

IC 7.1-3-10-7 is clear that the delivery of alcohol by the holder of a liquor dealer permit must be done by either the permit holder themselves (owner, officer, etc.) or a bona fide employee of the permit holder who holds an employee permit. The statute does not contemplate delivery by third-party companies on the permit holder's behalf.

In contrast, the holder of a direct wine seller's permit under IC 7.1-3-26-9 is "entitled to sell and ship wine to a consumer...to be delivered by the holder of a valid carrier's



alcoholic beverage permit under IC 7.1-3-18.” This is the only permit type in Title 7.1 that allows for delivery to be made by a common carrier.

Additionally, this issue was decided by the Indiana Court of Appeals in *Indiana Alcohol and Tobacco Commission v. Lebamoff Enterprises, Inc.* which held:

The express language of Indiana Code section 7.1-3-10-7(c) indicates that the General Assembly intended that a home delivery of wine under this section was limited to delivery by the permit holder, i.e., the owner, partner, or manager of the package liquor store, or an employee of the permit holder, so long as the employee holds an employee permit. This language does not appear to allow for delivery of the wine by any other individual who might be acting as an agent for the permit holder. If the General Assembly had intended for Indiana Code section 7.1-3-10-7(c) to allow for home delivery by a common carrier, it could have crafted the language of this section to specifically allow for such delivery as it did in Indiana Code section 7.1-3-26-9. See Ind. Code § 7.1-3-26-9 (allowing for home delivery of wine by the holder of a direct wine seller’s permit via common carrier).

The Alcohol and Tobacco Commission maintains the position that delivery of alcoholic beverages by a licensed liquor dealer permittee must only be made by the permit holder or a bona fide employee of the permit holder. The use of a third-party carrier to make deliveries on behalf of a liquor dealer permittee falls outside the scope of IC 7.1-3-10-7.

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.