WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director *Jessica Karls-Ruplinger, Deputy Director*

TO: SENATOR ROBERT COWLES

FROM: Anna Henning, Senior Staff Attorney AH

RE: Application of 2017 Assembly Bill 433, as Amended and Passed by the Assembly, to Certain Tailgating Situations

DATE: March 6, 2018

You requested an analysis regarding the application of 2017 Assembly Bill 433, as amended and passed by the Assembly, ("the bill") to the following two types of common "tailgating" situations near Lambeau Field: (1) rental of a private house for purposes of holding a pre-game party; and (2) tailgating outside a private home after paying to park in the home's driveway. As discussed below, it appears that a new licensing requirement under the bill could be interpreted to apply to those situations, especially to the first scenario, but the interpretation and enforcement would likely depend on the relevant facts.

SUMMARY OF CURRENT LAW AND RELEVANT PROVISIONS OF THE BILL

Current law generally prohibits a person who is in charge of a **public place**[1] from permitting the consumption of alcohol beverages on the premises of that public place, unless the person has an appropriate retail license or permit. The following types of places are exempt from that requirement: municipalities; buildings and parks owned by counties; regularly established athletic fields and stadiums; school buildings; campuses of private colleges (only during college-sponsored events); churches; State Fair Park; clubs; and commercial quadricycles (beer only). [s. 125.09 (1), Stats.]

[1] Relying on case law and Attorney General Opinions, the Department of Revenue (DOR) generally considers the nature of a particular event when determining whether a venue is a "public place" for purposes of alcohol beverage laws. Generally, invite-only events are not currently considered to constitute "public places," even if they are held in locations that are open to the public at other times.

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The bill expands the scope of that prohibition to apply it to an owner or person in charge of property on which certain **private events**[2] are held. Specifically, with similar exceptions[3] as apply to public places under current law, if an owner or person in charge of property that is not a public place **receives payment for the temporary use of the property by another person for a specific event**, the bill prohibits that owner or person from permitting the consumption of alcohol beverages on the property, unless the person has an appropriate retail license or permit.

DISCUSSION

You asked how the provisions in the bill regarding non-public places, described above, would apply to two "tailgating" scenarios that commonly occur near Lambeau Field on Green Bay Packer game days. As mentioned, the bill prohibits a property owner who receives payment for the temporary use of their property for a specific event from allowing the consumption of alcohol beverages on the property unless the owner has an appropriate retail license or permit. For both scenarios below, the analysis would likely be fact-dependent and would also depend on DOR's interpretation of the phrases "payment for temporary use of the property" and "specific event."

First, you asked how the bill would apply to renting a house for the purpose of holding a private pre-game party. Renting a house for a day or portion of a day appears likely to constitute paying for the temporary use of property. The remaining question is whether a pre-game party constitutes a "specific event" for purposes of the prohibition under the bill. Based on the plain meaning, it seems likely that a pre-game party could be interpreted to constitute a "specific event," but that interpretation may differ based on the facts. For example, if attendees are invited to the party via e-mail or social media page and arrive at the house specifically for the purpose of attending the party before a specific game, it appears likely that DOR might interpret the party to constitute a "specific event." In that case, the bill would require the property owner to obtain a retail liquor license before permitting consumption of alcohol beverages at the party.

In contrast, if a small group of friends rent a house for a weekend and, on one day of the weekend, happen to have a few drinks together at the house before walking to the stadium, that instance of sharing drinks is arguably less likely to constitute a "specific event" for which the property was rented. In that case, the bill might not require the property owner to obtain a retail license before allowing the renters to consume alcohol beverages.

Second, you asked how the bill would apply to tailgating in the driveway or yard of a private house after paying the property owner to park in the owner's driveway during a game. For this scenario, in addition to similar fact-dependent questions regarding whether the tailgating constitutes a "specific event," there is some question as to whether paying for parking

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[2] As noted in the previous footnote, an event may be non-public (i.e., private) even if it is held on property that is generally open to the public.

[3] However, the exceptions for clubs and commercial quadricycles do not apply to the prohibition as applied to non-public places under the bill.

constitutes paying for the temporary use of the property "for" that event. Arguably, in this scenario, people are paying to park, rather than for the "event" of tailgating. However, as with the previous scenario, that question would likely depend on the facts, such as the manner in which the parking is advertised and whether the payment reflects the going rate for parking alone.

Those questions would be addressed by DOR as it implements and enforces the bill, or by a court, in the event that an enforcement action was challenged.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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