



NONPROFIT ADVISOR

For DAV Departments and Chapters

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LIQUOR AND THE DAV

Many nonprofit organizations, especially those that have a fraternal component, need to pay attention to a myriad of laws pertaining to the sale and/or consumption of alcoholic beverages. DAV is no exception. In this issue of the newsletter, we will try to alert you to some of the issues that surround the sale and/or consumption of alcoholic beverages in connection with DAV activities.

Who regulates alcohol?

For the most part, regulation of the sale of alcohol remains very much within the purview of state and local governments. Although some federal tax issues, described below, may arise for DAV chapters that operate bars or lounges, compliance with state and local statutes and ordinances will generally be far more burdensome. In addition, the ever-increasing number and severity of “dram shop liability” laws should be a matter of concern whenever alcohol is connected with a DAV function.

What is regulated and how can we find out about it?

Since the beginning of our nation, liquor has always been a natural, and easy, target of regulation. Whether it is a national Prohibition or a local ordinance against uncorked wine bottles,

courts routinely uphold any and all matter of regulation of the “demon rum.”

The subjects of liquor-related regulation are many and include the following:

1. Licensing Requirements (always apply to permanent bar lounges and may apply to short-term events at which alcohol is served);
2. Financial Security Requirements (usually in the form of insurance, but may also be a bond or cash deposit);
3. Mandatory Background Checks for Bartenders/Servers; and/or
4. Mandatory Training for Bartenders/Servers.

In addition to the above, there can be restrictions on operating hours, removal of alcohol from the premises and (especially relevant to private clubs like DAV bar lounges) the admission and serving of non-members. Many of these regulations may even be county-specific and can vary even within a particular state. The best place to start a search for accurate information would be with the state Alcoholic Beverage Control agency, or its equivalent.

What are “dram shop liability” laws?

An intoxicated person (Joe) injures someone else (Mary). A “dram shop liability” law permits Mary to sue not only Joe, but persons or



establishments who helped Joe get drunk. Critics of these laws argue that Joe should be responsible for his own actions and that dram shop laws are nothing more than buck-passing and bad policy.

Bad or good, the laws exist in most states. In some places, a DAV chapter would only be liable if it served the beverages illegally (such as to a minor) or to a known alcoholic. However, in the vast majority of states, the DAV chapter will pay for damage caused by a person if the bartender/server “knew or should have known” that the customer was drunk – a very fuzzy standard that more often than not invites a verdict for the plaintiff.

How much will the chapter pay? In some states, damages are capped at \$250,000. In others, the sky is the limit. The best protection against this – apart from the obvious one of good management – is an adequate insurance policy, even in states where such a policy is not mandated by law. Further, with such a liability looming over a bar/lounge, would not the requirement of Section 9.3 of the National Bylaws that chapter assets be “safeguarded” demand adequate insurance?

By the way, “dram shop” and similar laws do not only apply to formally organized bars. In some

states, liability could even be imposed upon a DAV chapter based on the actions of someone who drank one too many beers at a Sunday picnic. The good news is that insurance for such activities is very inexpensive.

What does DAV say about bar lounges?

National Executive Committee Regulation 4 addresses this issue head-on. It says, in brief, that a bar lounge must comply with all relevant laws **and** that it must pay for itself (and cannot be subsidized with funds otherwise available for service to disabled veterans).

What does IRS say about bar lounges?

For DAV chapters, nearly all of which are exempt under Section 501(c)(4) of the Internal Revenue Code, the net income from a bar lounge is *taxable unrelated business income*. The only likely exception to this is if the bar lounge is operated 100% by volunteers. Bear in mind, the IRS defines “volunteer” very narrowly. Even tips can take a server/bartender out of the volunteer category and destroy the exception. Further, a DAV chapter cannot permit a bar lounge to become a “substantial part” of its activity without running a serious risk of losing its tax-exempt status.

Nonprofit Advisor is prepared by the Office of the DAV’s General Counsel and is published quarterly for the informational use of DAV Departments and Chapters. This newsletter is not intended to replace legal advice that may be required to address individual situations.