

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**



Legal Counsel Division

**MEMORANDUM**

**TO: Jonathan Berman**  
**Assistant Attorney General**  
**Alcoholic Beverage Regulation Administration**

**FROM: Janet M. Robins**   
**Deputy Attorney General**  
**Legal Counsel Division**

**DATE: October 30, 2013**

**SUBJECT: Legal Advice Concerning the District's Alcoholic Beverage Sale to Minors**  
**Laws**  
**(AL-13- 664)**

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This memorandum responds to your request for legal advice concerning the best interpretation of the District's alcoholic beverage sale to minors law. You provided us with a legal memorandum outlining your position on this issue and asked whether we believed the D.C. Court of Appeals would sustain this position. On October 7, 2013, we responded by e-mail, stating that we had reviewed your memorandum, the authorities you cited, and additional cases and that we agreed with your assessment of the legal requirements relating to sales to minors.

Your memorandum raised the question whether a licensee's sale of an alcoholic beverage to a minor without requesting identification is egregious under D.C. Official Code § 25-830(e)(1) (2012 Repl.). This provision states that, unless there has been an egregious violation, no licensee may be found guilty of a first-time violation of the sale to minors restriction in D.C. Official Code § 25-781 without having first received a written warning.<sup>1</sup> The term "egregious" is defined for this purpose in 23 DCMR § 807.1 as "a sale to minor violation where the licensee: (1) sold or served an alcoholic beverage to a minor who was unable to produce a valid identification after a request from the licensee to do so, or (2) intentionally sold an alcoholic beverage to a minor." In this case, the issue is whether a licensee's failure to ask for identification is sufficient to prove an intentional sale.

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<sup>1</sup> D.C. Official Code § 25-781 also provides that, in lieu of a written warning, a licensee can be found to be in violation if the licensee has previously received a citation for the violation or has had an enforcement action before the Alcoholic Beverage Control Board ("Board") within the past 4 years.

Based on the arguments and authorities in your memorandum, we agree that proof of a failure to ask for identification is insufficient to establish intent. To intentionally sell alcohol to a minor, a licensee must know that the customer is a minor and make the sale anyway in violation of the statute. When a licensee fails to request identification, the licensee will typically have no knowledge of the customer's minority, thus negating the element of intent.<sup>2</sup> We believe that it is likely that the D.C. Court of Appeals would agree with this conclusion.

I hope you find these comments useful. If you have any questions about this memorandum, please call Laurie Ensworth, Senior Assistant Attorney General, Legal Counsel Division, at 724-5537, or me at 724-5524.

JMR/lae

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<sup>2</sup> Of course, if the licensee is familiar with a specific minor, the licensee might actually know their minority status. In that case, a sale could be considered intentional and egregious.