

Better Safe Than Sorry

Dangers Lie in Assuming Legality of Common Practices

BY KEVEN DANOW

Last month, my wife and I had dinner in a well-known restaurant. While waiting for the host to seat us, we stood next to a display table on which an unlabeled bottle of wine was displayed. When we reviewed the wine list, we found that the restaurant had a house wine which it claimed was home bottled. While the wine was quite good, the sale was illegal. Under both New York Law and Federal Law, it is illegal to manufacture beverage alcohol for sale without the appropriate licenses and labels. Following the dinner, I began to think about how many violations of New York's Alcoholic Beverage Control Law I see when I dine out or shop.

Blurring the Line

Quite often, I see restaurants openly displaying and serving from infusing bottles. Section 106 of the ABC Law provides:

■ “No retail licensee for on-premises consumption... shall keep upon the licensed premises any liquors and/or wines ... except in the original sealed package as received from the manufacturer or wholesaler. Such containers shall have affixed thereto such labels as may be required by the rules of the liquor authority, together with all necessary federal revenue and New York state excise stamps as required by law. No retail licensee for on-premises consumption shall reuse, refill, tamper with, adulterate, dilute or fortify the contents of any container of alcoholic beverages as received from the manufacturer or wholesaler.”

The use of infusing bottles to add flavors to vodka is a form of illegal adulteration. It is also illegal for a bar, tavern or restaurant to mix cocktails, sangria punch or other mixed beverage alcohol in advance of service. On the other hand, it is legal to prepare the non-alco-

hol portion of the beverage in advance and then add the beverage alcohol at the time of sale. Wine may be decanted at the table and certain types of dispensing machines are also permitted.

Innocent Illegalities

Whenever there is a major sporting event, such as the Super Bowl, many restaurants, bars and taverns around the city run wagering pools. Customers pay to purchase a box on a grid. One team is represented by the vertical axis and the other by the horizontal. Numbers are drawn at random to label each axis. At the end of each quarter the last number of each team's score is used to pick a point on each axis. The customer who purchased the box where the two points intersect wins a portion of the total moneys used to purchase the boxes. Pools are great fun. They greatly increase the excitement of a sporting event and allow people who know little about the game to participate. But pools constitute gambling, and section 106 of New York's ABC law provides:

■ “No person licensed to sell alcoholic beverages shall suffer or permit any gambling on the licensed premises, or suffer or permit such premises to become disorderly.”

My partners and I have lunch at cafés around our office whose primary business is takeout and delivery. Many of these eateries have restaurant wine licenses. Signs posted above bottles of wine warn customers who wish to include wine with their outgoing order that the bottles must be opened and recorked before they leave the premise. ABC Law section 106 provides:

■ “No retail licensee for on-premises consumption shall sell, deliver or give away, or cause or permit or procure to be sold, delivered or given away any li-

quors and/or wines for consumption off the premises where sold.”

Section 81 of the ABC Law contains the following exception:

■ A restaurant licensed to sell wine under this section may permit a patron to remove one unsealed bottle of wine for off-premises consumption provided that the patron has purchased a full course meal and consumed a portion of the bottle of wine with such meal on the restaurant premises. For the purposes of this subdivision the term 'full course meal' shall mean a diversified selection of food which is ordinarily consumed with the use of tableware and cannot conveniently be consumed while standing or walking. A partially consumed bottle of wine that is to be removed from the premises pursuant to this subdivision shall be securely sealed by the licensee or an agent of the licensee prior to removal from the premises, in a bag such that it is visibly apparent that such resealed bottle of wine has not been tampered with. Such licensee or agent of the licensee shall provide a dated receipt for the bottle of wine to the patron. (Emphasis added).

While a patron who orders and consumes a portion of a bottle of wine along with a meal consumed at a restaurant may be permitted to take home the unconsumed portion of that wine, nothing in the law allows an on-premise licensee to sell wine for consumption off the premises with an outgoing order. On the other hand, a license to sell wine or spirits for consumption on the premises includes the privilege to sell beer for consumption off the premise.

Do not assume that what you see others do is legal. It pays to check.

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