



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS LIQUOR CONTROL COMMISSION

* * * * *

Interpretative Statement as to Charitable Donations

Approved August 17, 2021

A. Overview

The Michigan Liquor Control Commission's administrative rules prohibit persons from deriving a use or benefit from another person's liquor license without Commission approval. See Mich Admin Code R 436.1041. Additionally, the Michigan Liquor Control Code, MCL 436.1101, et seq., prohibits certain licensees from providing aid and assistance to another licensee. See generally, MCL 436.1609. Recently, questions have arisen about licensees providing charitable donations to unlicensed non-profit entities or, in other cases, licensees in one tier of Michigan's three-tier distribution system providing charitable donations to licensees in another tier. The Commission offers this interpretative statement to advise the public on the extent to which the law allows these contributions.

B. Basis for Interpretative Statement

The Commission has the "sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation and sale thereof." MCL 436.1201(2). And the Commission may issue interpretative statements that are explanatory and assist the public in understanding the laws the Commission administers. See MCL 24.207(h). Terms used in this interpretive statement that are defined in the Code or the Commission's administrative rules carry the definitions accorded in those laws.

C. Contributions to Unlicensed Non-Profit Entities

Under Mich Admin Code, R 436.1041(1), a licensee is prohibited from allowing a person not named on the license to use or benefit from the licensee's license. Similarly, the rule prohibits a licensee from obtaining a license for the use or benefit of another person. The Commission, however, encourages its licensees to be good corporate citizens.

The Commission does not view a licensee's mere monetary contribution to an unlicensed non-profit entity as allowing the unlicensed non-profit entity to use or benefit from the license and will not pursue enforcement action against a licensee solely for making such a contribution. Generally, to stay clear of use and benefit restrictions, a donation should be made by a licensee as its own decision and a licensee cannot allow an unlicensed non-profit entity to engage in an activity related to the licensee's license. An unlicensed non-profit entity should merely be the recipient of the donation.

“Unlicensed non-profit entity” as used in this interpretive statement is defined as a bona-fide non-profit entity that is exempt from the payment of taxes under the Internal Revenue Code.

Examples of donations deemed acceptable:

- a. A manufacturer manufactures a product with the express intent to donate all or a portion of the net profits from that product to an unlicensed non-profit entity.
- b. An on-premises retailer donates all or a portion of the net profits from the sale of drinks sold on a particular night to an unlicensed non-profit entity.

However, some contributions cross the line to allowing the unlicensed non-profit entity to use or benefit from the licensee’s license, especially when the unlicensed non-profit entity is engaging in an activity related to the licensee’s license.

Examples of donations deemed unacceptable:

- a. A licensee donates alcohol to an unlicensed non-profit entity to serve or sell at an upcoming event.
- b. A licensee allows an unlicensed non-profit entity to conduct an event at the licensed establishment during which the unlicensed non-profit entity will earn one dollar per drink sold by the licensee.

D. Contributions to Non-Profit Entities that are Special Licensees

When a non-profit entity holds a special license, it is also bound by the prohibition on allowing a person to use or benefit from its license. That person may be another licensee. Special licensees are also bound by the general prohibition on receiving aid or assistance from a licensee in the manufacturer or wholesaler tier, and licensees in those tiers are generally prohibited from giving aid or assistance to a special licensee. See MCL 436.1609(1).

This interpretive statement does not prohibit any conduct expressly allowed by statutory exceptions to MCL 436.1609(1), such as providing brand-logoed tents to special licensees under MCL 436.1609e or providing certain equipment to a special licensee under MCL 436.1610c without any conditions attached. However, if the donation of these items is made with certain conditions attached, the Commission may still find that the special licensee has allowed the donor to use or benefit from its license or has received prohibited aid or assistance.

Examples of contributions the special licensee may accept:

- a. A special licensee receives donated tables and chairs from another licensee to use during its event.

- b. A special licensee receives a brand logoed tent from a wholesaler to use during its licensed event, and the special licensee does not restrict logos or brands at the event to products carried by that wholesaler as a condition of receiving the tent.

Examples of contributions the special licensee cannot accept:

- a. A special licensee receives donated tables and chairs from another licensee and allows that licensee to operate the event.
- b. A special licensee receives cash donated by a manufacturer or wholesaler to cover the cost of the alcohol for a special license event.
- c. A special licensee receives beer dispensing equipment from a manufacturer to use during its event and agrees to sell only that manufacturer's products.

E. Final Considerations

This interpretive statement does not authorize conduct prohibited by the Code's aid-and-assistance restrictions. It also does not address situations where a licensee has received Commission permission to allow a person not named on its license to use or benefit from the license, such as through a participation permit.

This interpretive statement is not exhaustive. If a licensee has questions about whether a particular charitable contribution is permissible, the licensee should contact the Michigan Liquor Control Commission's Enforcement Division for further guidance.