



RISK MANAGEMENT INFORMATION
BEER SALES AS A FIRE DEPARTMENT FUNDRAISER

Running a beer booth at a community event can be an effective way to raise funds, but a significant liability risk comes along with any sale of alcoholic beverages. There are two components to managing that risk: server training and adequate liquor liability insurance limits.

Some fire departments occasionally sell beer as a fundraiser in conjunction with a community celebration or similar event; although it's important to note that cities, including fire departments, are not authorized to raise funds under state statute. Unless the fire department is specifically structured as a not-for-profit organization, it is limited from fundraising. Therefore, the appropriate home for any fund raising activity is with the fire relief association, since legally the relief association is a private non-profit corporation and as such is eligible to receive a temporary beer license.

Risks Relating to Beer Sales

The liquor laws make it clear that persons who sell or serve alcoholic beverages have a responsibility to avoid making sales that are illegal. Two of the most important responsibilities are to avoid selling or serving alcohol to anyone who is obviously intoxicated, and to avoid selling or serving anyone under age 21. Anyone who illegally sells or furnishes alcohol is potentially subject to both criminal prosecution and civil liability.

Learn More

Read more about fire department fund raising in:

[Raise Funds, Not Red Flags: Relief Association Fund Raising](#)

Criminal Penalties

The criminal penalties for violating liquor sale laws can be very severe. For example:

- It's a gross misdemeanor to sell, give, or furnish alcoholic beverages to an obviously intoxicated person. The penalty for a gross misdemeanor is a fine of up to \$3,000, imprisonment for up to a year, or both.
- It's a gross misdemeanor to sell, give or furnish alcohol to a person under the age of 21.
- It's a felony to sell, give, or furnish alcohol to a person under 21 if that person becomes intoxicated and causes or suffers death or grave bodily harm as a result.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

Civil Liability

Anyone who causes the intoxication of another person by illegally selling alcohol to that person can be held liable for damages resulting from that illegal sale. It's illegal to:

- Sell without a license
- Sell to a person under 21
- Sell to a person who is already intoxicated
- Sell after hours

Any of these can lead to liability, under Minnesota's Civil Damages Act, [M.S. 340A.801-.802](#) (also known as the Dram Shop Law).

In addition to liability for illegally *selling* alcohol, a person can also be held liable for furnishing or permitting the consumption of alcohol by persons under 21. [M.S. 340A.90](#).

The typical way the Civil Damages Act comes into play is that the licensee sells a drink to an intoxicated person, who then gets into his car and causes an accident. By law, the seller is liable for the injuries resulting from that accident.

There are no dollar limits on how much the seller can be held liable for, and the potential exists for that liability to be very large. A young person who's left a paraplegic for life, or a well-paid breadwinner who's killed and leaves several young dependents behind, are a couple examples that could easily result in a multi-million dollar damage award.

Server Training

To reduce the risks of criminal penalties and civil liability, it's extremely important that everyone who will be involved in selling or serving beer be aware of and understands the risks and their own responsibilities under the law. In other words, training is critical.

Formal alcohol server training is available through a number of sources. For organizations seeking liquor liability coverage through LMCIT for special event sales, LMCIT requires at least one supervisor to have completed a formal server training course and be present and in charge at each location at all times while beer sales are being conducted. While LMCIT does not require each individual server complete a formal training course, each server must receive instruction, either from the supervisor or from another competent person, as to their responsibilities.

LMCIT strongly recommends fire relief associations follow similar training guidelines even if purchasing liquor liability insurance from a private insurer. The insurer may have other specific requirements of its own for server training, which is why it's important to make sure the relief association is aware of and comply with those requirements.

Adequate Liquor Liability Insurance

Regardless of how well-trained servers are and how carefully the beer sales are managed, the risk of dram shop liability can never be completely eliminated. If liability occurs, the dollar amount of the liability is really a matter of the luck of the draw. The possibility of a multi-million dollar liability judgment is very real.

The statutes only require liquor licensees to have minimum insurance limits of \$50,000 per person and \$100,000 per occurrence (this limit is not required for a beer licensee whose annual sales were less than \$25,000 in the previous year). Cities can require a licensee to carry higher limits than what the statute requires. In any event, one of these “minimum limits” polices is clearly nowhere near enough to adequately cover the risk.

Learn More

Read more about liquor liability insurance in:

- [LMCIT Liquor Liability Coverage](#)
- [Alcohol In The City: Liability And Insurance Issues](#)

The risk that potential liability could be more than the organization’s insurance limits should be a serious concern to all parties involved: the relief association, the city, and the individual firefighter.

- From the standpoint of the *relief association* (assuming the relief association is the licensee), the concern is that the relief association’s assets are at risk. If the association were held liable for an amount greater than its liquor liability insurance limits, the association’s general fund could certainly be at risk. It’s possible that a claimant might also try to get at the money in the association’s special fund. While the statutes say the special fund can only be used to pay pensions and certain specific other expenses, it’s at least conceivable that a court might order those funds to be applied to what the association owes on a liquor liability claim. That could affect the association’s ability to meet its pension obligations to its members. If the association uses the “defined contribution” or “split the pie” pension system, it would mean much smaller pensions for future retirees.
- From the *city’s* standpoint, an excess judgment against the relief association on a liquor liability claim potentially could affect the city in several different ways:
 - o The claimant could argue that the relief association was really ultimately acting on behalf of the city in conducting the beer sales, and that the city should therefore be held liable for the relief association’s actions in illegally selling beer. Since under the statutes the relief association has a very direct and close special relationship to the city, a court might well be sympathetic to this argument and conclude the city should be vicariously liable for the relief association’s actions. That might be particularly true if the profits from the beer sales were being used to cover costs the city might otherwise bear, such as acquiring new fire equipment.

- o If the claimant were able to get at the assets in the relief association’s special fund to satisfy the judgment, it would increase the city’s future costs if the association uses the “defined benefit” approach to pensions. Since the city is require by law to provide enough funds from property taxes or other sources to enable the relief association to meet its pension obligations, the city would ultimately have to make up the loss if the claimant were able to get at the relief association pension funds.
- o If the insurance and other assets of the relief association weren’t sufficient, the claimant would very likely look for a way to make a claim directly against the city. They might try to argue, for example, the city was negligent in failing to adequately oversee and control the relief association’s activities.

Keep in mind, of course, that if the city does end up being liable and there isn’t insurance to cover it, the taxpayers will ultimately have to pay for it. Unlike a private corporation, the city doesn’t have the option to simply declare bankruptcy, hand over its assets, and walk away.

- From the *individual firefighter’s* standpoint, there’s a concern about personal liability as well. While liquor liability claims are typically brought against the licensee, the statute actually refers to “a person” who makes an illegal sale. There seems no reason why the claimant couldn’t sue the individual who actually served or sold the beer, in addition to suing the licensee. Depending on the circumstance, there could be a question of whether selling beer is part of the firefighter’s city duties as a city employee, and therefore whether they would be entitled to be defended and indemnified by the city. And even if it were considered part of the firefighter’s city duties, if the firefighter’s actions in selling beer were outrageous enough, it might be considered to be “malfeasance, willful neglect of duty, or bad faith”, in which case the firefighter would be on their own for any damages awarded against them.

In short, it’s in everybody’s interest to make sure there are reasonable insurance limits in place if the fire department is involved in beer sales.

How much insurance is enough?

The next question, of course, is “How much is enough?” Unfortunately, this is one of those “how high is up?” questions. No matter how much insurance is purchased, one can never be absolutely sure it will be enough. Given the nature of the risk, a \$500,000 insurance limit should probably be considered an absolute minimum any time a city or city-related entity is involved in liquor sales. If it is decided to operate under a low limit, everyone involved should be aware there’s a very real risk of liability that’s greater than the coverage limits.

Your League Resource

For more information please contact:

- Underwriting at 651-281-1200 or 800-925-1122; or
- Loss Control at 651-215-4079 or 8009925-1122

LMCIT recommends the city carefully consider carrying at least a \$1,000,000 limit for liquor liability, and even then there's still a very real risk it might not be enough.

Of course, one objection might be that by the time premiums are paid for limits that high, it will eat up all the profit and the organization won't make any money on the fundraiser. But if that's the case, the response should probably be to look for a different way to raise funds and to not go ahead with cheap, low-limit insurance. The organization might consider how many years of beer sale profits it might take to pay off \$100,000 or \$500,000 or \$1,000,000 of uninsured liability.

Pete Tritz 03/10