

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2015-012

**TO:** City Council; Mayor John Engen; Mike Haynes; Doug Harby; Kevin Slovarp; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Jason Diehl; Jeff Brandt; Chad Nicholson; Gordy Hughes; Ellen Buchanan; Chris Behan; Anne Guest; and Marty Rehbein

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** April 17, 2015

**RE:** Montana state alcohol laws prohibit alcoholic beverage bottle clubs at premises not licensed for the sale of alcoholic beverages

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### **FACTS:**

During city council public works committee discussion of a proposed sidewalk café ordinance discussion inquiry arose pertaining to Montana's state alcoholic beverage bottle club law.

### **ISSUE:**

Does Montana state law prohibit bottle clubs at premises not licensed for the sale of alcoholic beverages on premises alcohol consumption?

### **CONCLUSION:**

Yes, section 16-6-306 MCA entitled "BOTTLE CLUBS PROHIBITED" prohibits operation of alcoholic beverage bottle clubs on a premises not licensed for the sale of alcoholic beverages for on premises consumption. Montana state law defines a bottle club "as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages or otherwise furnishing premises for such purposes and from which they would derive revenue".

### **LEGAL DISCUSSION:**

Title 16, MCA is entitled “ALCOHOL AND TOBACCO”. Chapter 6 of title 16 MCA is entitled “ENFORCEMENT”. Title 16, chapter 6, part 3 MCA is entitled “MISCELLANEOUS PROHIBITIONS AND PENALTIES”.

Section 16-6-306 MCA entitled “BOTTLE CLUBS PROHIBITED” provides as follows:

**16-6-306. Bottle clubs prohibited.** The operation of alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages, or otherwise furnishing premises for such purposes and from which they would derive revenue. (emphasis added)

Section 16-6-306 MCA was originally enacted in 1959. This is the Montana state law that the Montana Department of Revenue, Liquor Division, states prohibits a restaurant business from allowing and/or persons/customers from bringing their own bottles of alcohol to restaurants that do not have a Montana state license to sell alcoholic beverages for on premises consumption. Further, as I understand it, the Montana Department of Revenue, Liquor Division expects local law enforcement to assist with enforcement of section 16-6-306 MCA.

### **CONCLUSION:**

Yes, section 16-6-306 MCA entitled “BOTTLE CLUBS PROHIBITED” prohibits operation of alcoholic beverage bottle clubs on a premises not licensed for the sale of alcoholic beverages for on premises consumption. Montana state law defines a bottle club “as any person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids for alcoholic beverages or otherwise furnishing premises for such purposes and from which they would derive revenue”.

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/s/

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Jim Nugent, City Attorney

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