

BEER DOES GOOD:

HOMEBREWER CHARITY EVENTS HALTED BY REGULATORS, BUT IS THERE A SOLUTION?

BY MELISSA FLATLEY, ESQ.

Reno homebrewers have raised nearly \$75,000 for charity in recent years, but the events suddenly stopped.

Within two years, a group of local homebrewers dubbed “The Sons of Fermentation” raised more than \$11,000 in 2017 and 2018 for the Cystic Fibrosis Foundation. The 2018 event brought 25 hobbyists to donated space in a Reno casino, serving nearly 50 beers and meads, and featuring a silent auction. The most popular brewers from these events were invited to have their beer served for a donation in a Reno gastropub to raise additional charitable funds.



Another popular event, Backwash, ran for six years and raised more than \$50,000 for outdoor charities. However, the charitable giving ended abruptly when the event hosts were told that they could not continue with their events as planned.

Many charitable competitions in Nevada were forced to cancel, and there is still no solution for the entities that benefit from these charitable contributions.

At first, organizers suspected that it was a tax issue. Under Nevada tax statutes (NRS 369), beer is subject to an excise tax paid by the importer or manufacturer. In the “three-tier” system that Nevada uses, the importer or manufacturer is the first to possess liquor in the state and is therefore responsible for paying the tax.¹

Notwithstanding exceptions to those tiers adopted by the legislature, all liquor that is sold to the public must be handled by a wholesaler.² The concept is that all liquor must pass through a wholesaler before it is sold to the public, and the records of the wholesaler can be used to verify that tax is paid on all liquor before it is sold.

However, a homebrewer is neither importing, nor selling beer, so the law does not require obtaining a license or paying tax on the beer produced.

Nevada law is otherwise silent on homebrewing.

This situation is different from other states’, particularly states that don’t have the three-tier system that Nevada utilizes in the supply chain of alcohol.

In an alcoholic beverage control state, like Utah, the entire liquor market is controlled by the government. Utah laws originally required a license before an alcoholic product was manufactured in the state, compared to Nevada’s law that states a license is only required for producers of liquor that will be sold to the public.³

In 2011, Utah adopted an exemption from the licensing requirement for the manufacture of fermented beverage in a personal residence. Utah Code § 32B-11-202 allows for the manufacture of up to 200 gallons of beer per year, if there are two or more people in the household of legal drinking age, for personal use or consumption, including “use at an organized event where fermented alcoholic beverages are judged as to taste and quality,” with further limits on the amount of beer or wine that may be removed for competition (one liter of wine, or 72 ounces of beer or heavy beer — greater than 4 percent alcohol by volume — for up to three categories of judging).

Other alcoholic beverage control states have found ways to allow homebrewer fundraisers and festivals in different capacities.

Nebraska homebrew competitions were stopped after complaints to the Nebraska Liquor Control Commission

that unregulated liquor was being served to the public. Legislative Bill 235, adopted in March 2019, allows for homebrewers to transport beer to exhibitions, festivals and tasting competitions, including fundraisers for nonprofit organizations, and to serve their beer if there is clear signage that the liquor was manufactured under an exception to the rules and regulations of the Nebraska Liquor Commission. The legislation received unanimous support in the Nebraska Legislature partially because it was seen as an economic development tool to support the growth of small businesses and to benefit nonprofit organizations.⁴

In 2014, California amended its licensing and permit exceptions to allow nonprofits to sell donated homebrew at events. Cal. Bus. & Prof. Code § 23356.2 (2015) provided additional restrictions on nonprofits established for the purpose of promoting home production of beer or wine, or whose membership comprised primarily of homebrewers. Nonprofits falling into this category may receive only two permits per calendar year, and the event must have an educational component. Further, only members of the nonprofit organization may attend the event, and the organization cannot solicit memberships on the day of the event at the event premises.

Back in Nevada, it turned out that the issue with the charitable beer competitions originated with the local health districts. Health districts are responsible for enforcing the title on public health and safety, which includes oversight of food establishments. Food is expansively defined to include beverages that are sold or served to the public. Interestingly, beer is not food for purposes of sales and use tax.

Because the fundraiser for the Cystic Fibrosis Foundation was located in a casino, which was a licensed food establishment, the health district said they would find the event to be a violation of NRS 446.870 if it were held in that location.

Through all of the changes to state liquor laws to allow for transportation and consumption of homebrew outside of

the home, the underlying issue remains that organized events or festivals have not been permitted to take place at establishments that are licensed for liquor or food service.

California made some headway in 2017, when it expanded the exceptions to liquor licenses and permits to allow homebrewers to meet and have competitions in licensed alcohol service establishments. Adopted Assembly Bill 2172 amended Cal. Bus. & Prof. Code § 23356.2 again, and it now allows for homebrew beer to be served in bars and restaurants, in conjunction with a homebrewers’ club meeting or

competition, and only for consumption by club members, competition organizers, competition judges or competition stewards.

Even California’s homebrew meeting law does not address the predicament faced by Nevada homebrewers trying to raise money for charity. Aside from

the benefits to nonprofit organizations, the Nevada homebrew community is disadvantaged by the reduced opportunities to fine-tune their hobby and respond to consumers’ palates.

Today, in Nevada, there is no solution. In the end, a solution will ultimately benefit creative Nevada hobbyists, future small business owners and the nonprofits that serve our communities. **NL**

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1. NRS 369.330.
2. The exceptions to the three-tier system include brewpubs, craft distilleries, estate distilleries and wineries. See NRS 597.230-240.
3. Compare Utah Code Ann. § 32B-11-201(2019) to NRS 369.180.
4. Nebraska Legislature, Transcript of Floor Debate, February 12, 2019. <https://www.nebraskalegislature.gov/FloorDocs/106/PDF/Transcripts/FloorDebate/r1day24.pdf>



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