



Liquor Liability



Risk Management Services receives frequent questions from members regarding a municipality's liability and the issues relating to insurance coverage for events held in or on municipally owned property where alcohol will be served or sold. There are a number of factors that a municipality or other public entity should consider before allowing a group or individual to have an event during which alcohol will be served in or on municipally owned property.

- ✦ Does the State of Maine require a Liquor License or permit for the type of event being held?
 - ◆ B.Y.O.B. functions require that the sponsor obtain a permit from the Bureau of Liquor Enforcement in the Department of Public Safety. A sponsor may be an individual, a business, or a nonprofit entity.
 - ◆ One of the application requirements for a B.Y.O.B. sponsor is to obtain written approval from the municipal officers or a designated municipal official for any B.Y.O.B. function to be held within the municipality.
 - ◆ When alcoholic beverages will be sold at a function the Maine Liquor Liability Act and its licensing requirements apply.

- ✦ Does the municipality have a specific written policy that regulates the use of municipally owned property by individuals or groups?
 - ◆ Is an alcohol use policy in effect for municipal facilities?
- ✦ Does the municipality have a written agreement for the use of municipal facilities?
 - ◆ Has the municipal attorney written, or reviewed, the agreement?
 - ◆ Does the written agreement require that a tenant who intends to serve liquor name the municipality as an additional insured-landlord?
- ✦ If the municipality allows the service of alcoholic beverages by those using its facilities, does it purchase a Liquor Liability policy to cover the exposure presented by tenants who serve alcohol on municipal premises? This kind of coverage is typically quite expensive.
- ✦ Most commercial property and casualty insurance policies limit coverage to Host Liquor Liability. It covers the occasional service of alcoholic beverages to guests at a social function much like the coverage offered under most Homeowner's insurance policies. Coverage for the sale of alcohol is excluded.

The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or another qualified professional of your choice.

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MMA's Legal Department recommends the following to members regarding liquor liability:

- ◆ Use a written agreement for use of municipal premises that includes language indemnifying the municipality. A sample may be found on MMA's web site (www.memun.org). Require the tenant to provide a Liquor Liability insurance binder for the length of the event naming the municipality as an Additional Insured.
- ◆ Require the tenant to sign a release of the municipality's liability for their use of any municipal facility.
- ◆ Check with your insurance carrier or agent to determine what, if any, coverage the municipality has under its property and casualty policy.

For members of MMA's Property & Casualty Pool who have an exposure to liquor liability, steps must be taken to limit the Pool's exposure. This can be accomplished in one of five ways:

- ◆ A specific agreement to hold the municipality harmless for all liquor related liability is part of the written agreement with tenants.
- ◆ The municipality may require that a tenant who intends to serve alcoholic beverages obtain Liquor Liability insurance coverage naming the municipality as an additional insured prior to the event.
- ◆ The governing board may make it a policy and part of the written agreement that no alcohol may be served by a tenant in or on municipal premises.
- ◆ A Landlord Liquor Liability insurance policy may be purchased by the municipality to cover the exposure presented by tenants who serve alcohol in or on the municipal premises. MMA's Risk Management Services can obtain this coverage on behalf of member municipalities through our Broker. This coverage is expensive.
- ◆ MMA reserves the right to add a specific exclusion to the municipality's Property & Casualty Pool coverage for Liquor Liability. We have not found it necessary to take this kind of action to date.



WELCOME NEW MEMBERS!!!

Property & Casualty Pool

Town of Columbia Falls
 Guilford-Sangerville Sanitary Dist.
 Town of Vassalboro
 Carroll Plantation

Workers' Compensation Fund

Town of Columbia Falls
 Guilford-Sangerville Sanitary Dist.
 City of Rockland
 Hollis Rescue Incorp.
 Town of Beaver Cove
 Carroll Plantation

Public Officials and Employment Practices

Liability

Town of Columbia Falls
 Guilford-Sangerville Sanitary Dist.
 Carroll Plantation
 Town of Saint John

Can We Talk?

By Chris Linville



Once upon a time (probably sometime in the 1980s), most people managed to live their lives without cellular phones. They were primarily the domain of big shot executive types.

However, in our brave new world, everybody has a cellular phone (or maybe it just seems that way). According to the National Conference of State Legislatures, more than 60 million people in the United States subscribe to wireless telephone services, and approximately 80 million will own wireless phones by the end of this year. These small, portable machines have changed the way we live and work. With their handy cell phones in tow, people can do business practically anytime or anywhere. These days, a cell phone power lunch could just as easily be describing a group of teenagers at a fast-food joint as it would the suit set at some French-accented dining establishment.

Increased Flexibility

Certainly, cell phones have made an impact on private enterprise, but they've also begun to make their mark on the public sector. While saying it's difficult to pinpoint the effect of cell phones in terms of specific cost saving and increased productivity, a number of risk managers agree that, on the whole, wireless communication has been a positive development.

Dave Roper, ARM, Risk Manager for Grand Junction, Colorado, says jokingly that within his entity, "cell phones kind of crept in out of nowhere while we were sleeping, and we had to figure out how to handle them. It [the phenomenon] has been growing pretty continuously in the last five years."

With a staff of 500 serving a population of 100,000 in the Grand Junction area, Roper says that cell phones have made a big difference for him and others in terms of flexibility.

"We have a fairly small office, and I don't always have a backup person here who can answer questions," he says. "Now, if I have to leave, I can put calls into voice mail, or forward them back to the secretary. I can still be in contact. It's freed me up to do things I couldn't do before, because I had to stay in the office to take calls."

For people in the field, cell phones have advantages over traditional radios that are mounted in vehicles, says Roper.

"If a person is out of the car at a work site, [a car radio] isn't a real reliable way to get in touch with them," he says.

For cities that have seen explosive growth in recent years, cell phones can be equalizers in maintaining services. Olathe, Kansas, a suburb of Kansas City, has seen its population almost double in the past 13 years, from 48,000 to 95,000. Yet the city's staff has increased at a smaller rate during the same period, from 490 to 650.

"We started hiring more people, but at a certain point you reach a level of diminishing returns," says Donald Anderson, Risk Manager of Olathe. "We have to improve efficiency, and cell phones are one way to do that." He points out that more than 150 full-time staffers are equipped with cell phones.

Anderson says that cell phones have been assets in increasing the quality and timeliness of customer service, especially in crunch-time situations, when a particular person, vendor or piece of equipment is needed in a hurry. "It can be absolutely critical" in addressing needs, he says.

Increased features are also making the job easier. Don Norris, ARM, CPDM, Risk Manager for Modesto, California, says that department heads and superintendents began commonly using cell phones in the mid-1990s, and that other forms of communications technology, such as alpha numeric pagers and combination phone/pager/radios, are increasingly being used. The staff of 1,185 serves a population of 250,000. About 300 people (primarily field crews, and building services and management information services personnel) have been issued cell phones.

"It's not a panacea," says Norris, but he adds, "It's a whole lot easier to get a hold of folks."

Safety Concerns



While the benefits of cell phones have been documented, there are increasing concerns about their use while driving. The NCSL, referring to studies published in the *New England Journal of Medicine*, reported that the distraction caused by phone use in motor vehicles quadrupled the risk of a collision during the brief period of a call, a rate equivalent to the impairment caused by legal intoxication.

Safety is certainly on the minds of risk managers.

"Cell phones are just one of the issues," says Anderson. "The new issue is using them responsibly. Most of us feel that between drunk driving and falling asleep at the wheel, cell phones are right up there [as a safety concern]."



Anderson says that common sense should play a role in safety, but it's still important to create awareness about using cell phones while driving.

"We're interested in educating people that there are times that you want to use voice mail, and not answer the phone until you're in a safe area," he says. "You don't want to answer when you're approaching dangerous intersections and risk running a red light, which has happened here. The distraction element is very, very high."

Norris says that in Modesto, "We haven't had an accident where cell phones were the cause." However, he understands the need to take steps to minimize the risks, acknowledging that pure luck is probably partly responsible for the good safety record.

In Grand Junction, Roper was part of a committee that created a cell phone policy for staff in an effort to address safety issues. (See "Guidelines for Cell Phone Use in Vehicles.") He says the guidelines, which were completed in November of 1999, took about three months to formulate.

"We did a lot of research, looking at other jurisdictions," he says. "We crafted a policy in the middle ground. We didn't want to be too restrictive or too lenient."

Roper says that proactive steps, such as a safety policy, help provide clout when trying to secure funding for new equipment. He feels more justified in asking for items, such as voice mail and hands-free speaking features for use in vehicles. "Without the safety rationale, they could say, 'OK, you need cell phones, but you don't need all these other bells and whistles,'" says Roper.

Was the threat of litigation a factor in creating the policy? "That was certainly a consideration," says Roper. "You can imagine if a public servant was in an accident." Actually, he'd probably prefer not to imagine such a scenario, but the policy is intended to reduce the chances of that happening.


Roper is pleased by the feedback the policy has created. "It's been well received," he says. "It generates awareness. The technology itself will probably change as time goes along, and we'll certainly try to adapt with it."

("Can We Talk" appeared in the April 2000 issue of Public Risk magazine. It is reprinted by kind permission of the Public Risk Management Association (PRIMA), located in Arlington, Virginia.)

Cell Phones: The Legislative View

So far, few state legislatures have taken action to specifically regulate cell phone use in automobiles. California, Florida and Massachusetts are among the states that have imposed minor restrictions. In California, rental cars with cell phone equipment must include written operating instructions for safe use. In Florida, cell phone use is permitted in an automobile as long as it provides sound through one ear and allows surrounding sound to be heard with the other ear. In Massachusetts, car phones are permitted as long as they don't interfere with vehicle operation, and drivers keep one hand on the steering wheel at all times. Oklahoma and Minnesota require police to include information about cell phones in accident reports.

Since 1995, at least 22 states have proposed bills concerning cell phones in automobiles. In 1999, 15 states proposed measures to restrict cell phones in motor vehicles. Legislation varied in severity from proposals that would ban all use in vehicles, to requirements for hands-free devices, phone call length restrictions, requirements to keep one ear free, telemarketing restrictions and improved data collection. Although none of the bills have passed yet, legislation is still pending in Georgia, Illinois, New Jersey, Pennsylvania, and New York. In Rhode Island another measure was held for further study. To date, the federal government hasn't acted to limit cell phone use in automobiles, deferring to the states.

Guidelines for Cell Phone Use in Vehicles

In an effort to address safety concerns regarding cell phone use while driving, Grand Junction, Colo., established a set of guidelines, listed here.

- ★ Whenever possible, use your cell phone when parked, or have a passenger use the phone.
- ★ If your position requires frequent cell phone use in a vehicle, you should have voice mail service and hands-free equipment for your phone and use both features to avoid distractions.
- ★ If your phone rings when you're driving - especially during hazardous conditions - let your cellular voice mail service take the call and listen to the message later when you're parked. Or, pull over before answering, if traffic conditions permit.
- ★ Make sure the phone is easy to see and reach. Place your cell phone in your vehicle where you can pick it up without removing your eyes from the road.
- ★ Suspend conversations during hazardous driving conditions or situations.

AMERICANS WITH DISABILITIES ACT Resources for Municipalities

Title II of the Americans with Disabilities Act (ADA) outlaws discrimination on the basis of disability in the provision of services, programs, and benefits by governmental entities to the public. Municipalities are responsible for complying with the requirements of this federal law but may find it difficult to easily identify and obtain the information needed.

The U.S. Department of Justice offers free copies of regulations and technical manuals concerning the Americans with Disabilities Act (ADA) and the provisions of governmental services to the public. The Department of Justice enforces the regulations of Title II and has manuals designed to assist governmental entities to comply with their obligations. The regulations and manuals may be downloaded directly from the Department of Justice website: www.usdoj.gov. Once on the site, select "Legal Documents", and go to the listings under the heading "Civil Rights Division". Select the topic entitled, "ADA Regulations and Technical Assistance Manuals" for a listing of what is available.

We at Risk Management Services recommend for review the following topics that may be found under the heading "State and Local Governments - Technical Assistance Manuals and Publications":

- ◆ Title II Assistance Manuals and Publications (1993) and Yearly Supplements. This is a 30 page manual that explains in lay terms what local governments must do to ensure their services, programs and activities are provided to the public in a nondiscriminatory manner.
- ◆ Title II Highlights. This is an 8 page outline that includes the ADA's requirements for local governments and is presented in a bullet form for quick reference.
- ◆ ADA Guide for Small Towns. This is a 21 page guide of basic ADA requirements and cost effective tips on how small towns can comply with the ADA.
- ◆ The ADA and City Governments. This is a 9 page guide of sample problems encountered by city governments of all sizes. It includes examples of common deficiencies.
- ◆ Commonly Asked Questions About the ADA and Law Enforcement. This is a 13 page guide that addresses the unique situations that law enforcement personnel face when dealing with the disabled in carrying out police functions such as arrests.