



# Legal Minute

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## What Permit?

### Legal Issues for One-Day Fundraising Events

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Texas nonprofit organizations often hold one-day events, such as bazaars, street fairs, sporting events, and cultural festivals, to raise money for the organization. It is important to consider legal issues that may arise when an organization sponsors such fundraisers.

#### Does an Organization Have to Collect Sales Tax on Items Sold at a One-Day Event?

Organizations exempted from sales tax by their recognition under IRS Section 501 (c)(3), (4), (8), (10) or (19) and chapters of organizations that qualify for sales tax exemptions under the religious, educational, or charitable categories, can conduct two one-day, tax-free sales or auctions each calendar year. Sales from the one-day event will be exempt from federal, state, and local taxes. During the one-day event, the organization is not required to collect sales tax on the sales price of taxable items (tangible items) sold for \$5,000 or less. Additionally, items manufactured by the organization and donated items that are not sold back to the donor may be sold tax-free during the one-day event regardless of their price. Ticket and food sales are also tax free. Other than these exceptions, nonprofits must obtain a sales tax permit and collect tax on all sales of taxable items, including alcohol.

For more information about the tax rules regarding one-day events see the Texas Administrative Code, Title 34, Rule 3.322(h)(2), available under the "Rules" tab at: <http://www.window.state.tx.us/taxinfo/sales/> and the Texas Comptroller's website on Sales and Use Tax: <http://www.window.state.tx.us/taxinfo/sales/> or call 1-800-252-5555.

#### What Constitutes a One-Day Event?

For purposes of the exemption, one day means 24 consecutive hours. For example, if an event is scheduled from noon on Saturday to noon on Sunday but runs over by one hour, the 25<sup>th</sup> hour will count as the second one-day event for the calendar year. An organization can hold two one-day events consecutively, but the events cannot exceed a total of forty-eight hours. If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, the events count as one tax-free sale or auction during that calendar year. Consequently, each exempt organization that participates in a joint tax-free sale or auction may hold only one additional tax-free sale or auction during that calendar year.

#### Can a Nonprofit Organization Charge an Entrance Fee to the One-Day Event?

Entrance fees will not be subject to tax. However, entrance fees to a casino night or similar events could constitute illegal gambling. The Attorney General has ruled that an entrance fee to play in a game that has an element of chance and in which prizes are awarded based on the outcome of the game is illegal gambling. Hosts and players alike are subject to criminal penalties. For more information see Texas C-BAR's August 2005 Legal Minute which can be found at [http://www.texasbar.org/legal\\_library/pubs/legal\\_minute.php](http://www.texasbar.org/legal_library/pubs/legal_minute.php).

## What Permits and Licenses Does a Nonprofit Need to Hold a One-Day Event?

### *Food Sales*

If an organization sells food prepared onsite at the one-day event, it must contact the local health department to determine which agency issues food preparation and sale permits and conducts inspections of food sale establishments in the area where the event will take place. The Texas Department of State Health Services exempts nonprofit organizations from getting a Temporary Food Establishment Permit that is required of for-profit organizations. However, each local authority has its own set of requirements. A nonprofit may be required to obtain a permit from either the city, county, or public health district. It is important that the nonprofit follow the necessary food safety guidelines! To locate the local department or to find more information on food sales and safety requirements see the Department of State Health Services, Environmental and Consumer Safety Section's website at <http://www.tdh.state.tx.us/bfds/retail/default.htm> or call (512) 834-6753.

### *Alcohol Sales*

An organization must apply for a temporary license from the Texas Alcoholic Beverage Commission office to sell beer or wine at a one-day event. A special Three-Day Wine and Beer Permit authorizes a nonprofit organization to sell wine and beer for on-site consumption at an event sponsored by the organization. The permit costs \$30. A nonprofit may obtain 10 temporary permits in one calendar year. Contact the local TABC office to get an application for a temporary permit. Contact information for the TABC regional offices is available at <http://www.tabc.state.tx.us/contact/default.htm> or by calling the main TABC licensing number (512) 206-3360. Sales of alcohol also present potential risks and nonprofits should consider hiring licensed bartenders if they plan to serve liquor at a one-day event.

### *Auctioneers*

If the organization holds an auction, an auctioneer may be hired to conduct the sale or auction. The organization may pay the auctioneer a reasonable fee, but the fee may not exceed 20% of the gross receipts.

### *Child Care*

A nonprofit can provide temporary child care at a one-day event without obtaining a special permit or license if the nonprofit program is not otherwise subject to licensing by the Texas Department of Family and Protective Services. Consider screening volunteers who work in this area. For additional information about exemptions from childcare licenses see <http://www.dfps.state.tx.us/>, type "exemptions" in the search area on the website, and click on "Exemption Determination Overview".

## What are the Health and Safety Standards for an Event Site?

The state does not mandate minimum health and standards for public gatherings of 5,000 people or less. However, most local governments have established minimum standards for public gatherings and a nonprofit should review local ordinances to determine what to provide. Local ordinances can typically be located on a city's website or at City Hall. Even if a nonprofit is not required to provide a location with access to bathroom facilities and drinking water, doing so will ensure that the people in attendance are comfortable and will stay longer at the event.

For gatherings of more than 5,000 people, the event host must supply:

- One suitable water outlet or container for each 100 people that attend the event.
- Two toilets for every 50 people that attend the event, one for males and one for females. The toilets must be clearly gender-designated, separate, and private. Port-O-Cans may be used for this purpose. Hand washing facilities must be provided in the vicinity of the toilets.
- An area of at least 50 square feet per person.
- Trash cans located conveniently throughout the facility and trash collection at least twice a day.
- In addition, amplifying equipment at the event must be operated at a level of no more than 70 decibels. These requirements are listed in Title 25 of the Texas Administrative Code, available on the Secretary of State's website at: <http://www.sos.state.tx.us/tac/index.html>.

## What Type of Insurance Should a Nonprofit Have For a One-Day Event?

A nonprofit will face additional risks with some activities conducted during a one-day event such as having a moonscape or conducting sporting events. Where the risks of physical injury are higher a nonprofit should ensure that it has enough insurance to help manage its risk. If the nonprofit's general commercial liability policy does not cover one-day events, a nonprofit should contact their insurance provider to find out if it is possible to purchase a rider to the policy to cover a one-day event. It is also possible to purchase insurance specifically to cover one-day events. Special event insurance is specifically designed to cover the additional risks incurred in the type of activities often included in one-day events.