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## THE B-GIRL PROBLEM—A PROPOSED ORDINANCE

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What are the problems that law enforcement agencies face as a result of taverns featuring B-girl operations? How have existing B-girl ordinances attempted to solve these problems? And how can the B-girl's activities be restricted without curtailing other activities which threaten no harm to the community? Considering these and related questions, in the following article the authors set forth a proposed B-girl ordinance designed to solve difficulties which other ordinances, they feel, have left unsolved.—EDITOR.

### THE EVIL

In the past, taverns, bars and other places serving alcoholic beverages have been used as a base of operations by prostitutes. In such places, a prostitute would meet a prospective customer, strike a bargain, and later, either on or off the premises, consummate the act of prostitution.<sup>1</sup> The owner or operator of the bar usually received a commission on the transaction.

Today, this activity is the exception rather than the rule. The bar girl has now replaced the prostitute as a source of "extra income" for the bar or tavern owner. She is commonly known as a B-girl. Her job is to mingle with the male patrons and induce them to buy her drinks. The drinks that are purchased by a male patron for her customarily consist of tea, colored water, or some mildly alcoholic beverage. For each drink she procures from a male patron, the B-girl is paid a commission. In the course of her sales campaign, she sometimes commits acts of lewdness upon a male patron to encourage his purchase of drinks for her.

There are a number of distinct categories of B-girls. One of the most common is the entertainer, who, after her performance, mingles with the male patrons. In many striptease establishments, this was, and is, a common practice. Female employees of taverns and bars, such as waitresses and bartenders, also engage in the solicitation of drinks. Still another category consists of women hired, usually on a commission basis, specifically to solicit drinks. They customarily sit or stand around the bar and strike up conversations with male patrons. Finally, there are women, not employed by the management of a tavern or bar, who solicit drinks from male patrons for the pleasure of drinking.

Taverns featuring B-girl operations pose a constant problem to local law enforcement agencies. In addition to the routine police problems caused by improperly run taverns, B-girl establishments are frequently the scene of a wide variety of criminal activities. Barbiturates and sedatives have been added to customers' drinks in order to induce unconsciousness, during which all of the customers' money and valuables were removed. Brutal beatings have been administered by the

<sup>1</sup> Cf. *People v. Holstun*, 167 Cal. App. 479, 334 P.2d 645 (1959).

tavern management to customers who refuse to pay for drinks which they claim they did not order for the B-girls. Finally, personal checks issued by out-of-town patrons to pay for the B-girls' drinks have been altered. Customers who have been the victims of the foregoing activities or who have found their bar bill to have reached astronomical proportions in a short period are, almost without exception, unwilling to bring their problem to the police or prosecutor's office for fear of publicity and reprisals.

Several cases are on record in the Chicago area where individuals who were under medication for respiratory infections were given "knock-out" pills in their drinks while patronizing B-girl bars. The combination of alcohol, sedative, respiratory infection, and prescribed medication resulted in death for the tavern patrons.

Moreover, police intelligence agencies have indicated that taverns with B-girl operations are frequently owned and/or operated by members of the organized crime syndicate or front men representing the syndicate members.

A B-girl operation can involve many potential defendants. The liquor licensee should and must be held accountable for the operation. The waitress and bartender who serve the drinks to the B-girl or who encourage a male patron to buy a B-girl a drink should also be held accountable. To maintain a supply of B-girls, a procurer's services might also be necessary, and he, too, should be held accountable. Finally, the owner of the real estate in which the operation exists might also be held accountable for the activities in his real estate.<sup>2</sup>

There can be little doubt that B-girl activities, whatever form they may take, serve no legal or social purpose and should be prohibited.

#### EXISTING ORDINANCES AND STATUTES

Many legislative bodies have already enacted statutes or ordinances against B-girl activities. These ordinances and statutes have considered most, but not all, of the problems involved. Prior to suggesting a possible B-girl ordinance, it is helpful to examine the existing ordinances and statutes and the judicial tests they have withstood.

Some statutes and ordinances have outlawed the solicitation of drinks by female employees from male patrons.<sup>3</sup> Others have prohibited fe-

males from loitering in the premises for the purpose of soliciting drinks;<sup>4</sup> a liquor licensee from allowing female employees to mingle with male patrons;<sup>5</sup> female employees from mingling with male patrons;<sup>6</sup> a liquor licensee from allowing any person to loiter in the premises for the purpose of soliciting drinks;<sup>7</sup> a female employee from being served a drink purchased by a male patron;<sup>8</sup> and a liquor licensee or his agents from employing females for the purpose of soliciting drinks.<sup>9</sup>

In only one case has a B-girl ordinance been held unconstitutional. In *City of Miami v. Kayfetz*,<sup>10</sup> the court held unconstitutional a section of an ordinance of the City of Miami, Florida, making it unlawful for any employee of a licensed establishment to drink alcoholic beverages in the premises or for the liquor licensee to serve him or her any alcoholic beverage in the premises. The court stated that this prohibition had no connection with the B-girl evil and was, therefore, unreasonable.

One of the best reasoned opinions concerning the power of a legislative body to enact a B-girl statute or ordinance is *City of Milwaukee v. Piscuine*.<sup>11</sup> There, the court upheld the constitutionality of an ordinance of the City of Milwaukee, Wisconsin, prohibiting entertainers from fraternizing with customers. The court said:

"It may appear to some that the common

CODE OF THE CITY OF CHICAGO, ILLINOIS, §147-15. Cf. CODE OF THE CITY OF MILWAUKEE, WISCONSIN, §90-24, prohibiting males and females from soliciting drinks.

<sup>4</sup> CODE OF THE CITY OF MIAMI, FLORIDA, §49, as set forth in *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957), constitutionality upheld.

<sup>5</sup> In *Re Manber Corp.*, 193 Pa. Super. 416, 165 A.2d 139 (1960); In *Re Tahiti Bar, Inc.*, 395 Pa. 355, 150 A.2d 112 (1959).

<sup>6</sup> CODE OF THE CITY OF MIAMI, FLORIDA, §46, as set forth in *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957); CODE OF THE CITY OF MILWAUKEE, WISCONSIN, §90-25, constitutionality upheld in *City of Milwaukee v. Piscuine*, 18 Wis. 2d 549, 119 N.W.2d 442 (1963); see also *People v. King*, 115 Cal. App. 2d 875, 252 P.2d 78 (1952).

<sup>7</sup> FLA. STAT. ANN. §562.131(2). WEST'S ANN. CAL. CODE, BUSINESS AND PROFESSIONS §25657(a).

<sup>8</sup> CODE OF THE CITY OF MIAMI, FLORIDA, §4-10, as set forth in *City of Miami v. Jiminez*, 130 So. 2d 109; (Fla. Ct. of App. 1961), constitutionality upheld; see also *Mecurio v. Dept. of Alcohol Beverage Con.*, 144 Cal. App. 2d 626, 301 P.2d 474 (1956).

<sup>9</sup> WEST'S ANN. CAL. CODE, BUSINESS AND PROFESSIONS §25657(a), and PENAL, §303; PURDON'S PA. STAT. ANN., tit. 47, §4-493 (25); CODE OF THE CITY OF MIAMI, FLORIDA, §47, as set forth in *City of Miami v. Kayfetz*, 92 So. 2d 798 (Fla. 1957), constitutionality upheld.

<sup>10</sup> 92 So. 2d 798 (Fla. 1957).

<sup>11</sup> 18 Wis. 2d 599, 119 N.W.2d 442 (1963).

<sup>2</sup> Cf. ILL. REV. STAT. ch. 43, §184 (1963).

<sup>3</sup> FLA. STAT. ANN. §562.131(1), constitutionality upheld in *De Joris v. Lee*, 151 So. 2d 830 (Fla. 1963);

council of the City of Milwaukee, which city is world-famous for *gemutlichkeit*, was not true to this tradition in enacting an ordinance that makes it out of bounds for a female entertainer or other female employee of a liquor emporium just to mosey up to the bar located on the premises. However, the ordinance is decidedly unlike the section of the City of Miami ordinance ruled invalid in *City of Miami v. Kayfetz*, supra; it is similar though not identical to the other valid sections of that ordinance and other legislation deemed reasonable and valid in the Anderson, Jiminez, King and Goesaert cases, supra.

"The regulation of conduct of female employees in liquor establishments is a necessary and reasonable exercise of the police power. Although standing or sitting at a bar may not by itself be conduct which is against morals and the public welfare, this is not the test. Ever since Eve, mankind has recognized that one thing may lead to another and if the City of Milwaukee common council chose to enact these restrictions as part of a program (along with ordinance 90-24 prohibiting solicitation of drinks by female employees) to reduce the fraternizing by female employees with patrons of these liquor establishments, we must hold that this ordinance is a reasonable exercise of the police power and that the regulations are directly related to preserving morals and the public welfare.

"No constitutional guarantees of female employees have been breached. The ordinance is valid."<sup>12</sup>

Defenses raised by the liquor licensee of his lack of knowledge of the B-girl activities or his absence from the premises when the alleged activities took place are among the most difficult problems a prosecutor can encounter in the enforcement of a B-girl ordinance. These defenses have been raised in prosecutions based on B-girl ordinances and regulations and in prosecutions involving other violations of liquor statutes. The courts have unanimously rejected the defenses in cases involving statutes which provide that the liquor licensee is liable for the acts of his agents.<sup>13</sup> It would, there-

fore, be advisable to provide for the accountability of a liquor licensee for the acts of his agents in connection with B-girl activities in a B-girl ordinance.

#### A PROPOSED ORDINANCE

The objective of a comprehensive B-girl ordinance is to eliminate undesirable activities while leaving as much freedom as possible to employees, patrons, and liquor licensees of a licensed establishment. Female employees should be able to drink, mingle, and converse with male patrons to whom they are related by blood or marriage. A woman should not be guilty of a crime for receiving an unsolicited drink from a male patron, nor should the male patron be punished for purchasing it for her. Indeed, if such activities were criminal, much of the entire adult male and female population would be guilty of a violation at one time or another during their lives.

Another area that deserves special attention is that of a female liquor licensee, or the mother, daughter, wife, or sister of a licensee who is working in the licensed premises. Statutes have prohibited female bartenders, but have allowed the female licensees or female relatives of a licensee to tend bar. This distinction has been upheld by the United States Supreme Court.<sup>14</sup> The Supreme Court, in considering a Michigan statute which permitted the licensing of females as bartenders only where the females were the wives or daughters of male owners, held that the Michigan legislature's judgement, that the ownership of a bar by a husband or father minimizes the dangers to which other female bartenders would be subjected, was reasonable. Likewise, in a B-girl ordinance, the prohibition of female bartenders, other than female licensees or a mother, daughter, wife, or sister of a licensee, might be included to alleviate a general moral problem. However, if such a provision is included, then an exception should probably be provided to allow the exempted female bartenders to mingle and fraternize with customers, since such activity is usually not the kind which is connected with a B-girl operation.

Bearing in mind the foregoing considerations, the following is a proposed B-girl ordinance:

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494 (1879). See also ILL. REV. STAT. ch. 43, §185 (1963).

<sup>14</sup> *Goesart v. Cleary*, 335 U.S. 464 (1948); see also *Henson v. City of Chicago*, 415 Ill. 564, 114 N.E.2d 778 (1953).

<sup>12</sup> 18 Wis. 2d at 612, 119 N.W.2d at 449-50 (1963).

<sup>13</sup> *Cooper v. State Board of Equalization*, 137 Cal. App. 2d 672, 290 P.2d 915 (1955); *Mecurio v. Dept. of Alcoholic Beverage Con.*, 144 Cal. App. 2d 626, 301 P.2d 474 (1956); *Wright v. Munro*, 144 Cal. App. 2d 843, 301 P.2d 997 (1956); *People v. Falk*, 310 Ill. 282, 141 N.E. 719 (1923); *Noecker v. People*, 91 Ill.

WHEREAS, female waitresses, employees, entertainers, hostesses and persons employed on contractual bases have been found to be employed to solicit, beg, induce or request drinks from male patrons, customers or visitors for themselves and others in places of business possessing liquor licenses issued by Center City, and,

WHEREAS, said female waitresses, employees, entertainers, hostesses and persons employed on contractual bases receive commissions on the drinks that they solicit, beg, induce or request from male patrons, customers or visitors to purchase for themselves and others, and,

WHEREAS, the solicited drinks served to said female waitresses, employees, entertainers, hostesses and persons employed on contractual bases consist of colored water, tea or some mildly alcoholic beverage, without the knowledge of and as a fraud upon said male patrons, customers or visitors, and,

WHEREAS, females not employed in licensed premises also solicit drinks from male patrons, customers or visitors, and,

WHEREAS, said female employees and other females sometimes commit acts of lewdness upon said male patrons, customers or visitors in connection with the solicitation of alcoholic and nonalcoholic beverages and said acts are committed in the licensed premises, and,

WHEREAS, many of said females engaged in soliciting drinks are prostitutes who ply their trade in licensed establishments while soliciting drinks and there make appointments for assignations which later take place off of the licensed premises with said male patrons, customers or visitors, and,

WHEREAS, criminal activities, such as the drugging and beating of male patrons and the alteration of patrons' checks, often take place in establishments where the said females engage in the above-mentioned activities, and,

WHEREAS, female bartenders, other than the liquor licensee or the mother, daughter, wife or sister of said licensee, create moral and social problems, and,

WHEREAS, it is the opinion of the City Council of Center City that the foregoing acts and conditions are harmful to the health, morals and welfare of the people of Center City,

Now, therefore, the following ordinance is hereby enacted:

### 1. DEFINITION

The phrase, "licensed establishment," as used in this ordinance, shall be defined as those places of business which are issued a liquor license from Center City.

### 2. FEMALE PERSONS WORKING IN A LICENSED ESTABLISHMENT

It shall be unlawful for any female agent, employee, entertainer, hostess, waitress or person employed on any contractual basis working in a licensed establishment to:

- (a) Solicit, beg, induce or request any male patron, customer or visitor in such licensed establishment to purchase any alcoholic or nonalcoholic beverage for herself or any other person, or,
- (b) Accept from any male patron, customer or visitor in such licensed establishment any alcoholic or non-alcoholic beverage for herself or any other person, or,
- (c) Fraternize, associate, mingle or dance with any male patron, customer or visitor in such licensed establishment, provided, however, that any licensee or the mother, daughter, wife or sister of the licensee may so fraternize, associate, mingle or dance.

Provided, however, the aforesaid activities shall not be prohibited in connection with any contact any of the aforesaid females may have with any male patrons, customers or visitors to whom she is related by blood or marriage nor shall any of the aforesaid prohibited activities be deemed to prevent any of the aforesaid females from accepting and serving the order of a male patron or customer for any alcoholic or non-alcoholic beverage in the regular course of her employment or work.

### 3. OTHER FEMALE PERSONS

It shall be unlawful for any unescorted female to:

- (a) Loiter in any licensed establishment for the purpose of soliciting, begging, inducing or requesting any male patrons, customers or visitors to purchase any alcoholic or non-alcoholic beverages for herself or any other person, or,
- (b) Solicit, beg, induce or request any male patrons, customers or visitors in any licensed establishment to purchase any

alcoholic or nonalcoholic beverages for herself or any other person.

Provided, however, any female may engage in the above activities if the male patron, customer or visitor is related to her by blood or marriage.

#### 4. OTHER PROHIBITED ACTIVITIES

It shall be unlawful for any female or male person to:

- (a) Employ any female for the purpose of having her engage in any activities in a licensed establishment prohibited by Section 2, or,
- (b) Solicit, beg, induce or request any male patron, customer or visitor of a licensed establishment to purchase or give any alcoholic or nonalcoholic beverage to any female, female agent, employee, entertainer, hostess, waitress or person engaged on any contractual basis working in such licensed establishment, or,
- (c) Knowingly serve any alcoholic or non-alcoholic beverage in a licensed establishment to any female agent, employee, entertainer, hostess, waitress or person employed on any contractual basis working in such licensed establishment which was purchased by any male patron, customer or visitor in such establishment not related to said female by blood or marriage, or,
- (d) Knowingly serve in a licensed establishment any alcoholic or nonalcoholic beverage to a female which was solicited, begged, induced or requested by said female from, and purchased by, a male patron, customer or visitor of such licensed establishment not related to said female by blood or marriage.

#### 5. LIQUOR LICENSEE

- (a) It shall be unlawful for any liquor licensee of any licensed establishment to:
  - (1) Employ any female agent, employee, entertainer, hostess, waitress or person on any contractual basis for the purpose of having her engage in any activities prohibited in Section 2, or,
  - (2) Suffer or permit any female agent, employee, entertainer, hostess, waitress or person employed on any contractual basis to engage in any activities prohibited in Section 2, or,
  - (3) Suffer or permit any female agent, employee, entertainer, hostess, waitress

or person employed on any contractual basis to be served, in the licensed establishment, any alcoholic or nonalcoholic beverage purchased by a male patron, customer or visitor of the licensed establishment not related to said female by blood or marriage, or,

- (4) Suffer or permit any females to engage in any activities prohibited in Section 3, or,
- (5) Suffer or permit any alcoholic or non-alcoholic beverage to be served to a female which was solicited, begged, induced or requested by a female from, and purchased by, a male patron, customer or visitor of such licensed establishment not related to said female by blood or marriage, or,
- (6) Suffer or permit any agent or person employed on any contractual basis working in the licensed establishment to engage or employ any female for the purpose of having her engage in any activities prohibited in Section 2, or,
- (7) Suffer or permit any agent or person employed on any contractual basis working in the licensed establishment to solicit, beg, induce or request any male patron, customer or visitor in such licensed establishment to purchase or give any alcoholic or non-alcoholic beverage to any female, female agent, employee, entertainer, hostess, waitress or person employed on any contractual basis present or working in the licensed establishment.
- (b) It shall be the duty and responsibility of every liquor licensee of a licensed establishment to display at all times a printed poster, placard or sign in the following places:
  - (1) Next to the liquor license of said licensed establishment,
  - (2) In the washroom or dressing room facilities used by female and male persons working in the licensed establishment, and,
  - (3) In a place which should be visible at all times from that portion of the licensed establishment customarily used or occupied by male patrons, customers or visitors when consuming alcoholic or nonalcoholic beverages.

Said poster, placard or sign shall read as follows:

*"NOTICE TO FEMALES WORKING IN THE PREMISES, AND FEMALE AND MALE PATRONS: "IT IS UNLAWFUL FOR ANY FEMALE WORKING IN THE PREMISES AND ANY FEMALE PATRON TO SOLICIT OR INDUCE ANY MALE PATRON TO PURCHASE ANY ALCOHOLIC OR NONALCOHOLIC BEVERAGE TO BE SERVED TO HER OR ANY OTHER PERSON. VIOLATORS ARE SUBJECT TO FINE."*

The lettering of such poster, placard or sign shall be in plainly visible type and shall be no less than one-half ( $\frac{1}{2}$ ) inch in height.

- (c) It shall be the duty and responsibility of every liquor licensee of a licensed establishment to keep a copy of this ordinance in the premises and make it available to the male and female persons working in the licensed establishment.

#### 6. FEMALE BARTENDERS

It shall be unlawful for any licensee, his manager, or other person in charge of any licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon to

engage, employ or permit the engagement or employment of any female person other than the licensee or the mother, daughter, wife or sister of the licensee to draw, pour or mix any alcoholic liquor provided however the females listed in Section 2 shall be allowed to accept and serve the order of a male patron, customer or visitor for any alcoholic or nonalcoholic beverage in the regular course of her employment and work.

#### 7. PENALTY

Any person convicted of violating any of the sections or subsections of this ordinance shall be fined not less than \$100.00 or more than \$150.00 for the first offense and not less than \$175.00 or more than \$250.00 for each subsequent offense. Any conviction under this ordinance shall not preclude the liquor commissioner of Center City from also revoking or suspending the license of a licensed establishment.

#### 8. PARTIAL INVALIDITY

The sections and subsections of this ordinance shall be deemed to be separable and the invalidity of any section or subsection of this ordinance shall not affect the validity of the remainder.