



# POLICE / PROSECUTOR UPDATE

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The Court of Appeals was recently called upon to determine whether a hotel hallway is a **"public place" for purposes of the public intoxication statute**. The defendant in the case claimed that he was a guest, or at least a guest of a guest, of a hotel registrant and that such a person who is in the hotel lobby or hallway is not in a public place or place of public access within the meaning of the public intoxication statute.

The statute does not define the term "public place." The Court of Appeals reviewed what constituted a public place as examined in previous cases: a business establishment open to the public is a public place or place of public resort; finding a person in the cab of a truck that was parked a few feet from the traveled portion of a highway was in a public place; a passenger in a vehicle on a public highway is in a public place; a person who was found drunk in a bank parking lot at night was in a public place; a person in a car parked on a private lane 20-30 feet from a public highway was not in a public place; a person's conviction for being found intoxicated while attending a party at a private residence was reversed because a private residence is not "usually accessible to the neighboring public."

The defendant argued that a hotel lobby or hallway should be treated the same as common areas of an apartment building, where generally members of the public at large are not impliedly invited or encouraged to enter except when they have personal or private matters to conduct with the tenants. The Court of Appeals agreed that there are some similarities between common areas of an apartment complex and the hallways of a hotel. However, there are also critical distinctions. On one hand, residents of an apartment complex are permanent to the extent that they have leases or month-to-month agreements with the landlord. The facilities are residential in nature and serve as the resident's home during the duration of their leases, and the residents reasonably expect a certain degree of privacy in the areas immediately

surrounding their apartments. On the other hand, hotel guests are more transient and seek more temporary housing. As a result, a hotel serves numerous members of the public on a daily basis. Whereas residents of an apartment complex may become acquainted with their neighbors they frequently encounter in the common areas, the identities of those staying at a hotel are constantly changing. Because of this, hotel guests expect to enjoy little privacy outside their individual rooms and are aware that they may encounter many unfamiliar members of the public in the hallways and other common areas.

Additionally, invited visitors to apartment complexes are there for the sole purpose of visiting a resident. The general public is neither invited nor permitted to be there. Hotels, however, frequently solicit business from the public for purposes other than providing shelter and often invite the public to use the dining, banquet, retail, or recreational facilities without even staying in the hotel. The escalators, elevators, and hallways are open to the public. Thus, in the court's view, a hotel hallway is in fact a public place for purposes of the public intoxication statute.

The court made the following generalizations. A "public place" does not mean a place devoted solely to the use of the public; it means a place which is in point of fact public, as distinguished from private - a place that is visited by many persons, and usually accessible to the neighboring public. "In any place accessible to the public" means any place where the public is invited and is free to go upon special or implied invitation - a place available to all or a certain segment of the public.

Wright v. State, \_\_ N.E.2d \_\_ (Ind. App. 07/11/02).