To: Edward J. Hudak; Miriam S. Ramos

From: Israel U. Reyes, Manuel A. Guarch, The Reyes Law Firm, P.A., Police Legal Advisors

Approved: Craig E. Leen, City Attorney for the City of Coral Gables CL

RE: Legal Opinion Regarding Definition of "Public Place" in Relation to Section 112.532, Florida Statutes (2014).

Date: May 5, 2015

Please proceed to issue the opinion. I adopt it as a City Attorney Opinion under section 2-201(e)(1) of the City Code. I would like to emphasize in doing so that the opinion does not determine that drinking at a restaurant or bar is a crime in any way. That would not make any sense. Instead, it determines that it is a crime to be intoxicated at a restaurant or bar and to cause a public disturbance or endanger other persons or property. In this respect, a restaurant is being treated the same way as any other public place or place of public accommodation, which makes perfect sense.

The Coral Gables Police Department has requested guidance as to the meaning of the phrase "public place" as used in Section 856.011, Florida Statutes (2014), regarding Disorderly Intoxication.

I. Questions Presented:

Is a restaurant considered a "public place" for the purposes of Section 856.011, Florida Statutes (2014), regarding Disorderly Intoxication?

II. Brief Answer:

Yes. Generally, a restaurant that holds itself open for the public use and attendance will fall within the definition of a "public place" as that term is used in Section 856.011, Florida Statutes (2014).

III. Analysis:

A. Statutory Language.

Section 856.011(1), Florida Statutes (2014), provides, in relevant part,

> No person in the state shall be intoxicated and endanger the safety of another person or property, and no person in the state shall be intoxicated or drink any alcoholic beverage in *a public place* or in or upon any public conveyance and cause a public disturbance.

(Emphasis added).

The statute does not define what constitutes a "public place" for the purposes of a violation of Section 856.011, Florida Statutes (2014). Further, the case law on the specific issue is quite sparse. Florida courts have only addressed the issue on two occasions, and neither is particularly instructive on the issue presented herein.[1]

The cardinal rule of statutory construction is that the courts will give a statute its plain and ordinary meaning." *Weber v. Dobbins*, 616 So.2d 956, 958 (Fla.1993). When a term is not defined within a statute, traditional rules of statutory construction provide that the plain meaning of the term may be ascertained from the dictionary definition of the term. *See L.B. v. State*, 700 So.2d 370, 372 (Fla.1997), superseded by statute on other grounds as stated in *State v. A.M.*, 765 So.2d 927 (Fla. 2d DCA 2000); *Williams v. State*, 378 So.2d 902, 903 (Fla. 5th DCA 1980) (declaring "the word 'shall' as used by the Supreme Court when establishing rules of court procedure means exactly what it usually means and as defined in an accepted dictionary"). Black's Law Dictionary defines "Public," in relevant part as "[a] place open or visible to the public <in public>. PUBLIC, Black's Law Dictionary (10th ed. 2014). Further, while the statute does not define what constitutes a "public place" within the meaning of the statute, one can also look to the Florida Standard Jury Instructions in Criminal Cases for guidance. *See Jefferson v. State*, 927 So. 2d 1037, 1038 (Fla. 4th DCA 2006)(Courts may also rely on the definitions contained in the Florida Standard Jury Instructions.). Thus, Florida Standard Jury Instruction 29.1 for Disorderly Intoxication provides, as an optional definition for "public place" that "[a] 'public place' is a place where the public has a right to be and to go."[2]

Another doctrine of statutory construction, in *pari materia*, requires courts to construe related statutes together so that they will illuminate each other. *See, Grant v. State*, 832 So. 2d 770 (Fla. 5th DCA 2002); *Zapo v. Gilreath*, 779 So. 2d 651 (Fla. 5th DCA 2001). Therefore, a Court may look to the use of the term "public place" in other criminal statutes and the related jury instructions to inform its interpretation of the phrase within Section 856.011, Florida

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[1] See, State v. Folks, 723 So. 2d 369 (Fla. 4th DCA 1998) (Inside of car in the lot of a public park was a "public place" within the meaning of ordinance that prohibits consumption of intoxicating beverages in public places); Royster v. State, 643 So. 2d 61 (Fla. 1st DCA 1994)(Front porch of defendant's residence was not "public" place within meaning of public intoxication statute).

[2] This instruction was adopted in 1981.

Statutes (2014). As a result, it is worth noting that Standard Jury Instruction 10.6 Discharging A Firearm [In Public],[3] and 11.9 Exposure of Sexual Organs, define a "public place" as "any place intended or designed to be frequented or resorted to by the public."[4]

A survey of cases addressing the location of offense as "public" within requirement of enactments against drunkenness is also persuasive on this matter. See, 8 A.L.R.3d 930.[5] The survey indicates that, "generally speaking, a public place is a place or area where the public, as a whole, has a right to be. It is usually a place accessible or visible to all members of the community." See, 8 A.L.R.3d 930, at Fn. 1.

Georgia, Kentucky and Texas, for example, have addressed this issue of what constitutes a public place throughout the United States, and the courts of those states have regarded a restaurant or tavern as a "public place" within the purview of statutes prohibiting intoxication in a public place. In *Laboon v State*, 67 S.E.2d 149, 151 (Ga. Ct. App. 1951), the court recognized that a cafe, to wit, Lyn Reed's Cafe, could be found to be a "public place" within the purview of the applicable statute relating to a public place of gathering or assembly. Similarly in *Asher v Commonwealth*, 220 S.W.2d 867 (Ky. Ct. App. 1949), where a statute provided in part that it is an offense for any person to be under the influence of alcoholic beverages on any public or private road, or in a passenger coach, streetcar, or other public place or gathering, the court held that the "Stinnett Gap Place" was a public place within the purview of the statute, although no whisky or beer was found there, and that the defendant, who was found under the influence of alcohol at the aforementioned place, had been properly arrested for committing a public offense in the presence of the state patrolmen. In *Ginter v Commonwealth*, 262 S.W.2d 178 (Ky. Ct. App. 1953), under a statute making it an offense to be drunk in a public place, the court held that defendant's conviction was proper where he was found in a state of drunkenness by the arresting officers in a combined beer tavern and restaurant, on the ground that such a tavern and restaurant was a public place within the contemplation of the statutory provision. Finally, in *Howard v State*, 174 S.W. 607 (Tex. Crim. App. 1915), in sustaining the conviction for drunkenness in a public place, the court held that a restaurant in which people commonly resort for the purpose of eating and purchasing refreshments is a "public place." However, it should be noted that "[d]runkenness in a private room of a hotel, as opposed to those areas of the hotel which are normally public in nature, has been held by some jurisdictions not to be a 'public place' within criminal statutes against intoxication in a public place, because once rented it has ceased to be a public portion of the hotel." See, 8 A.L.R.3d 930.[6]

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[3] This instruction was adopted in 1981 and was amended in 1989 and 2013.

[4] This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84] and 2010.

[5] This annotation discusses cases which have considered the question of what constitutes a place "public" within requirements of enactments prohibiting drunkenness in various, more or less specifically defined, "public" places.

[6] *See Lewis v Commonwealth*, 197 Ky. 449 (1923)(Under a criminal statute making it a misdemeanor for any person to be drunk or intoxicated in any public place, including a public or private road, a passenger coach or streetcar, or other public place or building, the court held that drunkenness in a room of a hotel was not such an offense as contemplated by the statute, unless it could be included under the language "or other public place or building." but this section of the statute only could be interpreted as meaning a place exposed to the public, where the public gather together or pass to and fro, and the "building" referred to would necessarily imply a public one which

A review of analogous case law in Florida provides the following guidelines:

(1) The inside of a car in the lot of a public park was a "public place" within the meaning of ordinance that prohibits consumption of intoxicating beverages in public places. *See State v. Folks*, 723 So. 2d 369, 370 (Fla. 4th DCA 1998);

(2) a front porch of a house is not regarded as a "public place" for purposes of the disorderly intoxication statute. *See Royster v. State*, 643 So. 2d 61, 64 (Fla. 1st DCA 1994); and

(3) a lounge where undercover officers merely had to give their first names and pay a nominal fee was a "public place" for purpose of Section 800.03, Florida Statutes (2004). *See State v. Kees*, 919 So. 2d 504, 504 (Fla. 5th DCA 2005).

Additionally, "'Restaurant' is defined as 'a public eating place.'" *State, Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 67 (Fla. 1st DCA 1984); *see also Hall v. Caldwell*, 37 So. 2d 421, 421 (Fla. 1948) (referring to restaurants as public eating places); *Cunningham v. Stefanidi*, 215, 197 So. 722, 722 (Fla. 1940) (referring to restaurants as public eating places); *Cooper v. Roger's of Orlando, Inc.*, 266 So. 2d 372, 372 (Fla. 4th DCA 1972) (holding that the operator of restaurant is an operator of a public place and owes his invitees the duty to use due care to maintain the premises in a reasonably safe condition); *Matson v. Tip Top Grocery Co.*, 9 So. 2d 366, 368 (Fla. 1942) (holding that the owner of public place such as a grocery store owes invitee the duty of maintaining premises in a reasonably safe condition, but was not required to maintain them in such condition that no accident could possibly happen to a customer).

Finally, it must be noted that simply being intoxicated or otherwise drinking any alcoholic beverage in a "public place" is not sufficient to substantiate an arrest for disorderly intoxication. As the statute and corresponding Jury Instructions make clear, the crime of disorderly intoxication can be proven in two possible ways. First, the State can present evidence sufficient to prove beyond a reasonable doubt, that the Defendant was intoxicated, *and endangered the safety of another person or property.* Alternatively, the State can prove the Defendant was intoxicated or drank any alcoholic beverage in a public place or in or upon a public conveyance, *and he caused a public disturbance.*

As it relates to the instant opinion, one must be "intoxicated or drink any alcoholic beverage... *and* cause a public disturbance." § 856.011, Fla. Stat. (2014).

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belonged to or was used by the public for the transaction of public or quasi-public business, such as a school or courthouse."); *Bordeaux v State* 19 SW 603 (Tex. Crim. App. 1892)(The Court, although recognizing that a public place, under a statute making it an offense to be drunk in a public place, might include hotels and taverns, held that it was reversible error to convict defendant of violating the statute for being drunk in a hotel room, because when the accused became a guest in the hotel and rented one of the rooms therein, such room no longer constituted a public room but became a private room in the sense that it was now his private abode for the present time, and thereafter ceased to be a public portion of the hotel.).

As Florida Standard Jury Instruction 29.1 for Disorderly Intoxication provides,

> "Intoxication" means more than merely being under the influence of an alcoholic beverage. Intoxication means that the defendant must have been so affected from the drinking of an alcoholic beverage as to have lost or been deprived of the normal control of either [his] [her] body or [his] [her] mental faculties, or both. Intoxication is synonymous with "drunk."

Therefore, in the absence of evidence demonstrating that a "public disturbance" was caused, a charge of disorderly intoxication will not be supported.

IV. Conclusion:

While the issue of whether a restaurant is considered a "public place" has not directly presented itself in the appellate arena in the context of Section 856.011, Florida Statutes (2014), it is the legal opinion of this Firm that a restaurant that holds itself open for the public use and attendance will fall within the definition of a "public place" as that term is used in Section 856.011, Florida Statutes (2014).

Herbello, Stephanie

From:	Leen, Craig
Sent:	Tuesday, May 05, 2015 5:59 PM
To:	Herbello, Stephanie
Cc:	Ramos, Miriam; Figueroa, Yaneris; Chen, Brigette
Subject:	FW: Draft Legal Opinion - "Public Place" Definition
Attachments:	Legal Opinion - Public Place Definition (Draft 2).docx
Importance:	High

Please include the attached and below as a City Attorney Opinion.

Craig E. Leen, City Attorney
Board Certified by the Florida Bar in
City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Tuesday, May 05, 2015 5:58 PM
To: 'Manuel Guarch'; Ramos, Miriam
Cc: Israel Reyes; Hudak, Edward; Figueroa, Yaneris
Subject: RE: Draft Legal Opinion - "Public Place" Definition
Importance: High

Please proceed to issue the opinion. I adopt it as a City Attorney Opinion under section 2-201(e)(1) of the City Code. I would like to emphasize in doing so that the opinion does not determine that drinking at a restaurant or bar is a crime in any way. That would not make any sense. Instead, it determines that it is a crime to be intoxicated at a restaurant or bar and to cause a public disturbance or endanger other persons or property. In this respect, a restaurant is being treated the same way as any other public place or place of public accommodation, which makes perfect sense.

Craig E. Leen, City Attorney
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City, County and Local Government Law
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134

Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

Celebrating 90 years of a dream realized.

From: Manuel Guarch [mailto:mguarch@reyeslawfirmpa.com]
Sent: Tuesday, May 05, 2015 3:29 PM
To: Leen, Craig; Ramos, Miriam
Cc: Israel Reyes
Subject: RE: Draft Legal Opinion - "Public Place" Definition

Craig and Miriam,
Please see the attached revised draft legal opinion and advise if it meets your approval.
Regards,

Manuel Guarch, Esq.
Associate Attorney
THE REYES LAW FIRM, P.A.
One Columbus Center
1 Alhambra Plaza, Suite 1130
Coral Gables, FL 33134
Tel: 305.403.2272
Fax: 305.403.2273
mguarch@reyeslawfirmpa.com

THE REYES LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS

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notify the sender of the error by reply e-mail so that our address record can be corrected. Thank you for your cooperation.

From: Manuel Guarch
Sent: Monday, April 27, 2015 7:24 PM
To: Leen, Craig
Cc: Ramos, Miriam; Israel Reyes
Subject: Re: Draft Legal Opinion - "Public Place" Definition

Will do.

Sent from my iPhone

On Apr 27, 2015, at 7:22 PM, Leen, Craig <cleen@coralgables.com> wrote:

> I would like it expanded. I want it to be clear that the City would not be arresting someone merely for drinking alcohol in a bar or restaurant, but that the disorderly component must be present as well.
>
> **Craig E. Leen, City Attorney**
> *Board Certified by the Florida Bar in*
> *City, County and Local Government Law*
> City of Coral Gables
> 405 Biltmore Way
> Coral Gables, Florida 33134
> Phone: (305) 460-5218
> Fax: (305) 460-5264
> Email: cleen@coralgables.com
>
> ---
>
> **From:** Manuel Guarch [mailto:mguarch@reyeslawfirmpa.com]
> **Sent:** Monday, April 27, 2015 7:20 PM
> **To:** Ramos, Miriam
> **Cc:** Leen, Craig; Israel Reyes
> **Subject:** Re: Draft Legal Opinion - "Public Place" Definition
>
> Miriam,
> I will be more than happy to do that. But just to be clear, the opinion was not aimed at analyzing all the elements of the offense, but rather, whether an arrest that otherwise meets the elements of disorderly intoxication can be made if the person is located within a restaurant. Perhaps a footnote clarifying that would be appropriate? Or would you like for me to expand the opinions breadth?
>
> Sent from my iPhone
>
> On Apr 27, 2015, at 7:03 PM, Ramos, Miriam <mramos@coralgables.com> wrote:
>
>> Manny, Craig and I have discussed. Generally, the opinion is fine but we would like further emphasis on the "and" that is required under the statute. Clearly, it is unreasonable to conclude that an individual who is intoxicated (more than 2 glasses of wine, for example) can be arrested at a restaurant if he/she is behaving normally. The individual must also be acting in a disorderly fashion in order for the arrest to make sense. While the "and" is certainly in the statute which you quote, please weave the concept throughout your analysis of why a restaurant is a public place and most importantly, in your conclusion.

Thanks,

Miriam

Sent from my iPad

On Apr 27, 2015, at 11:54 AM, Manuel Guarch <mguarch@reyeslawfirmpa.com> wrote:

Mr. Leen,

Please see the attached draft opinion. It is somewhat time-sensitive. Please advise if you approve for dissemination.

Regards,

<image001.jpg>
Manuel Guarch, Esq.
Associate Attorney
THE REYES LAW FIRM, P.A.
One Columbus Center
1 Alhambra Plaza, Suite
1130
Coral Gables, FL 33134
Tel: 305.403.2272
Fax: 305.403.2273
mguarch@reyeslawfirmpa.com
<image002.jpg><image003.png>

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<Draft Legal Opinion - Public Place Definition (Final).docx>

Please Note: Florida has a very broad Public Records Law. Most written communications to or from State and Local Officials regarding State or Local business are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

<image002.jpg>

<image003.png>

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the public and media upon request. Your email communications may therefore be subject to public disclosure.

THE REYES LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS

LEGAL OPINION

To: Edward J. Hudak, Jr.
Interim Chief of Police
City of Coral Gables Police Department

Via: Craig Leen
City Attorney
City of Coral Gables

From: Israel U. Reyes, Managing Partner
Manuel A. Guarch, Associate Attorney
The Reyes Law Firm, P.A.
Police Legal Advisors

Date: May 6, 2015~~May 5, 2015~~

Re: Definition of "Public Place" in Relation to Section 112.532, Florida Statutes (2014).

The Coral Gables Police Department has requested guidance as to the meaning of the phrase "public place" as used in Section 856.011, Florida Statutes (2014), regarding Disorderly Intoxication.

I. Questions Presented:

Is a restaurant considered a "public place" for the purposes of Section 856.011, Florida Statutes (2014), regarding Disorderly Intoxication?

II. Brief Answer:

Yes. Generally, a restaurant that holds itself open for the public use and attendance will fall within the definition of a "public place" as that term is used in Section 856.011, Florida Statutes (2014).

III. Analysis:

A. Statutory Language.

Section 856.011(1), Florida Statutes (2014), provides, in relevant part,

> No person in the state shall be intoxicated and endanger the safety of another person or property, and no person in the state shall be intoxicated or drink any alcoholic beverage *in a public place* or in or upon any public conveyance and cause a public disturbance.

(Emphasis added).

The statute does not define what constitutes a "public place" for the purposes of a violation of Section 856.011, Florida Statutes (2014). Further, the case law on the specific issue is quite sparse. Florida courts have only addressed the issue on two occasions, and neither is particularly instructive on the issue presented herein.[1]

The cardinal rule of statutory construction is that the courts will give a statute its plain and ordinary meaning." *Weber v. Dobbins*, 616 So.2d 956, 958 (Fla.1993). When a term is not defined within a statute, traditional rules of statutory construction provide that the plain meaning of the term may be ascertained from the dictionary definition of the term. *See L.B. v. State*, 700 So.2d 370, 372 (Fla.1997), superseded by statute on other grounds as stated in *State v. A.M.*, 765 So.2d 927 (Fla. 2d DCA 2000); *Williams v. State*, 378 So.2d 902, 903 (Fla. 5th DCA 1980) (declaring "the word 'shall' as used by the Supreme Court when establishing rules of court procedure means exactly what it usually means and as defined in an accepted dictionary"). Black's Law Dictionary defines "Public," in relevant part as "[a] place open or visible to the public <in public>. PUBLIC, Black's Law Dictionary (10th ed. 2014). Further, while the statute does not define what

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constitutes a "public place" within the meaning of the statute, one can also look to the Florida Standard Jury Instructions in Criminal Cases for guidance. *See Jefferson v. State*, 927 So. 2d 1037, 1038 (Fla. 4th DCA 2006)(Courts may also rely on the definitions contained in the Florida Standard Jury Instructions.). Thus, Florida Standard Jury Instruction 29.1 for Disorderly Intoxication provides, as an optional definition for "public place" that "[a] 'public place' is a place where the public has a right to be and to go."[2]

Another doctrine of statutory construction, *in pari materia*, requires courts to construe related statutes together so that they will illuminate each other. *See, Grant v. State*, 832 So. 2d 770 (Fla. 5th DCA 2002); *Zapo v. Gilreath*, 779 So. 2d 651 (Fla. 5th DCA 2001). Therefore, a Court may look to the use of the term "public place" in other criminal statutes and the related jury instructions to inform its interpretation of the phrase within Section 856.011, Florida Statutes (2014). As a result, it is worth noting that Standard Jury Instruction 10.6 Discharging A Firearm [In Public],[3] and 11.9 Exposure of Sexual Organs, define a "public place" as "any place intended or designed to be frequented or resorted to by the public."[4]

A survey of cases addressing the location of offense as "public" within requirement of enactments against drunkenness is also persuasive on this matter. *See*, 8 A.L.R.3d 930.[5] The survey indicates that, "generally speaking, a public place is a place or area where the public, as a whole, has a right to be. It is usually a place accessible or visible to all members of the community." *See*, 8 A.L.R.3d 930, at Fn. 1.

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[2] This instruction was adopted in 1981.

[3] This instruction was adopted in 1981 and was amended in 1989 and 2013.

[4] This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84] and 2010.

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Georgia, Kentucky and Texas, for example, have addressed this issue of what constitutes a public place throughout the United States, and the courts of those states have regarded a restaurant or tavern as a "public place" within the purview of statutes prohibiting intoxication in a public place. In *Laboon v State,* 67 S.E.2d 149, 151 (Ga. Ct. App. 1951), the court recognized that a cafe, to wit, Lyn Reed's Cafe, could be found to be a "public place" within the purview of the applicable statute relating to a public place of gathering or assembly. Similarly in *Asher v Commonwealth*, 220 S.W.2d 867 (Ky. Ct. App. 1949), where a statute provided in part that it is an offense for any person to be under the influence of alcoholic beverages on any public or private road, or in a passenger coach, streetcar, or other public place or gathering, the court held that the "Stinnett Gap Place" was a public place within the purview of the statute, although no whisky or beer was found there, and that the defendant, who was found under the influence of alcohol at the aforementioned place, had been properly arrested for committing a public offense in the presence of the state patrolmen. In *Ginter v Commonwealth*, 262 S.W.2d 178 (Ky. Ct. App. 1953), under a statute making it an offense to be drunk in a public place, the court held that defendant's conviction was proper where he was found in a state of drunkenness by the arresting officers in a combined beer tavern and restaurant, on the ground that such a tavern and restaurant was a public place within the contemplation of the statutory provision. Finally, in *Howard v State*, 174 S.W. 607 (Tex. Crim. App. 1915), in sustaining the conviction for drunkenness in a public place, the court held that a restaurant in which people commonly resort for the purpose of eating and purchasing refreshments is a "public place." However, it should be noted that "[d]runkenness in a private room of a hotel, as opposed to those areas of the

hotel which are normally public in nature, has been held by some jurisdictions not to be a 'public place' within criminal statutes against intoxication in a public place, because once rented it has ceased to be a public portion of the hotel." *See*, 8 A.L.R.3d 930.[6]

A review of analogous case law in Florida provides the following guidelines:

(1) The inside of a car in the lot of a public park was a "public place" within the meaning of ordinance that prohibits consumption of intoxicating beverages in public places. *See State v. Folks*, 723 So. 2d 369, 370 (Fla. 4th DCA 1998);

(2) a front porch of a house is not regarded as a "public place" for purposes of the disorderly intoxication statute. *See Royster v. State*, 643 So. 2d 61, 64 (Fla. 1st DCA 1994); and

(3) a lounge where undercover officers merely had to give their first names and pay a nominal fee was a "public place" for purpose of Section 800.03, Florida Statutes (2004). *See State v. Kees*, 919 So. 2d 504, 504 (Fla. 5th DCA 2005).

Additionally, "'Restaurant' is defined as 'a public eating place.'" *State, Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco v. Salvation Ltd., Inc.*, 452 So. 2d 65, 67 (Fla. 1st DCA 1984); *see also Hall v.* Caldwell, 37 So. 2d 421, 421 (Fla. 1948) (referring to restaurants as public eating places); *Cunningham v. Stefanidi*, 215, 197 So.

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[6] *See Lewis v Commonwealth*, 197 Ky. 449 (1923)(Under a criminal statute making it a misdemeanor for any person to be drunk or intoxicated in any public place, including a public or private road, a passenger coach or streetcar, or other public place or building, the court held that drunkenness in a room of a hotel was not such an offense as contemplated by the statute, unless it could be included under the language "or other public place or building." but this section of the statute only could be interpreted as meaning a place exposed to the public, where the public gather together or pass to and fro, and the "building" referred to would necessarily imply a public one which belonged to or was used by the public for the transaction of public or quasi-public business, such as a school or courthouse."); *Bordeaux v State* 19 SW 603 (Tex. Crim. App. 1892)(The Court, although recognizing that a public place, under a statute making it an offense to be drunk in a public place, might include hotels and taverns, held that it was reversible error to convict defendant of violating the statute for being drunk in a hotel room, because when the accused became a guest in the hotel and rented one of the rooms therein, such room no longer constituted a public room but became a private room in the sense that it was now his private abode for the present time, and thereafter ceased to be a public portion of the hotel.).

722, 722 (Fla. 1940) (referring to restaurants as public eating places); *Cooper v. Roger's of Orlando, Inc.*, 266 So. 2d 372, 372 (Fla. 4th DCA 1972) (holding that the operator of restaurant is an operator of a public place and owes his invitees the duty to use due care to maintain the premises in a reasonably safe condition); *Matson v. Tip Top Grocery Co.*, 9 So. 2d 366, 368 (Fla. 1942) (holding that the owner of public place such as a grocery store owes invitee the duty of maintaining premises in a reasonably safe condition, but was not required to maintain them in such condition that no accident could possibly happen to a customer).

Finally, it must be noted that simply being intoxicated or otherwise drinking any alcoholic beverage in a "public place" is not sufficient to substantiate an arrest for disorderly intoxication. As the statute and corresponding Jury Instructions make clear, the crime of disorderly intoxication can be proven in two possible ways. First, the State can present evidence sufficient to prove beyond a reasonable doubt, that the Defendant was intoxicated, *and endangered the safety of another person or property.* Alternatively, the State can prove the Defendant was intoxicated or drank any alcoholic beverage in a public place or in or upon a public conveyance, *and he caused a public disturbance.*

As it relates to the instant opinion, one must be "intoxicated or drink any alcoholic beverage... *and* cause a public disturbance." § 856.011, Fla. Stat. (2014).

As Florida Standard Jury Instruction 29.1 for Disorderly Intoxication provides,

> "Intoxication" means more than merely being under the influence of an alcoholic beverage. Intoxication means that the defendant must have been so affected from the drinking of an alcoholic beverage as to have lost or been deprived of the normal control of either [his] [her] body or [his] [her] mental faculties, or both. Intoxication is synonymous with "drunk."

Therefore, in the absence of evidence demonstrating that a "public disturbance" was caused, a charge of disorderly intoxication will not be supported.

IV. Conclusion:

While the issue of whether a restaurant is considered a "public place" has not directly presented itself in the appellate arena in the context of Section 856.011, Florida Statutes (2014), it is the legal opinion of this Firm that a restaurant that holds itself open for the public use and attendance will fall within the definition of a "public place" as that term is used in Section 856.011, Florida Statutes (2014).