

# On Tap

An OVI Report

## OPENED CONTAINER?

As common as turkey, sweet potatoes and grandma's fruit cake, is the purchase and consumption of beverages containing alcohol during the holiday season. In addition, it is common to give or receive a bottle of wine or other alcoholic beverages as gifts.

When leaving a party, do not take any opened bottles or containers of alcoholic beverage with you. Even if you did not consume any alcoholic beverages, you may be committing a crime if you possess an "opened" bottle or container of an alcoholic beverage in your vehicle.

Ohio's *Opened Container Law* prohibits a person from possessing an opened container of any alcoholic beverage while (1) operating a motor vehicle or, (2) as a passenger in a motor vehicle. The law also prohibits possession of an opened container while being in or on a stationary motor vehicle.

Ohio's *Opened Container Law* is "open" to legal arguments defining "possession" in determining the driver's or passenger's access to the opened bottle. Although having an opened bottle or container of an alcoholic beverage anywhere in or on a vehicle appears to be a crime under Ohio's *Opened Container Law*, "possession" may be difficult to prove if the bottle or container is not readily accessible to the driver or passenger.

Of course, there are exceptions to every law. The *Opened Container Law* does not apply to passengers in the rear of a limousine. The law does apply to the limousine driver and any passengers in the front seat of the limousine. Unfortunately, taking a limousine may be an impractical way to travel to and from your holiday gatherings.

Another notable exception is an opened bottle of wine which is securely resealed by the permit holder that sold the wine or an employee of the permit holder before the bottle is removed from the premises. The bottle must be secured in a manner that is visibly apparent if subsequently opened or tampered. The opened and resealed bottle must be stored in the trunk. If the vehicle does not have a trunk, the bottle must be stored behind the last upright seat or an area not normally occupied by the driver or passenger(s) and not easily accessible by the driver. This exception is only applicable to wine.

Certainly, all fine dining establishments would be more than happy to sell a bottle of wine and will be happy to "re-seal" the bottle for you. However, if the bottle is not resealed in compliance with the law and you place that bottle in your vehicle, you may be committing a crime. In addition, if you leave the establishment without first paying the inevitable resealing fee, you may be committing another crime.

Ultimately, if bringing spirits to a holiday party, the safest bet is to consider it a gift and leave it for the host. If you are given a bottle of wine or other gift containing alcohol, don't open it until you are home. If you open the bottle or container, be sure to leave it at the party. When taking an opened bottle of wine from a bar or restaurant, be sure that it is properly sealed before placing it in your vehicle.

Be aware that the holiday season is a time for heightened detection and apprehension of impaired drivers. Law enforcement will be on the lookout for "clues" that a driver consumed or is impaired by alcohol.

A violation of Ohio's *Opened Container Law*, will most certainly give rise to suspicion of operating a vehicle under the influence (OVI). It is one of the clues that all officers are trained to look for when attempting to apprehend drunk drivers. An opened container will lead to the odor of alcohol.

The odor of alcohol will lead to bloodshot eyes. Bloodshot eyes will lead to slurred speech. Slurred speech will lead to stumbling and staggering. Stumbling and staggering will lead to the failure of field sobriety tests. All of the above could lead to your arrest.

Is it worth having that partially consumed bottle of wine or liquor in the back seat of your vehicle?

Be safe and enjoy the holiday season. Drink responsibly. Leave the booze at the party.

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