

March 11, 2003

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Dear Sir or Madam:

ISSUE: This office is in receipt of your e-mail dated February 12, 2003, wherein you ask whether it is permissible for a licensed establishment to close its kitchen on slow nights and offer free pizza to patrons as long as the overall food sales remain over thirty percent (30%), or whether food must always be available. You would also like to know what sections of the Liquor Code address this subject.

OPINION: The Liquor Code defines "restaurant" as "a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs accommodating at least thirty persons at one time." [47 P.S. § 1-102, emphasis added.]. There is no requirement that all of the food offered at the restaurant be prepared on the premises. There is nothing in the Liquor Code or the Board's Regulations that prohibits a licensee from obtaining food from outside the licensed premises for sale and/or service to patrons on the licensed premises. Therefore, it would be permissible to purchase pizzas from a third party for patrons on the licensed premises as long as there is sufficient food for at least thirty (30) persons at all times.

Furthermore, section 406(a)(3) of the Liquor Code [47 P.S. § 4-406(a)(3)] provides that restaurant liquor licensed establishments whose sales of food and nonalcoholic beverages are equal to thirty percent (30%) or more of the combined gross sales of both food and alcoholic beverages may sell alcoholic beverages between the hours of 11:00 a.m. on Sunday and 2:00 a.m. on the following Monday, if they purchase a Sunday sales permit. As long as the above ratio is met, your establishment would still be entitled to its Sunday sales permit.

**THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE**

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LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY  
THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

Pennsylvania State Police,  
Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 03-069