

March 18, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

D. Foster

Gu Genetti's Hotel & Restaurant, Inc.

Re: Clarifications of Act 116 Requirements

Dear Mr. or Ms. Foster:

ISSUE: This office is in receipt of your e-mail of February 6, 2013, in which you request a legal advisory opinion regarding various issues pertaining to Act 116 as follows:

1. What is the definition of "serving staff?"
2. Are staff under the age of eighteen (18) required to be RAMP-certified at an off-premises catering event with alcohol (with the understanding that these staff may be present to work a function with food, but may not serve or prepare alcoholic beverages)?
3. Are buffet staff at an off-premises catering event with alcohol required to be RAMP-certified? You note that at off-premises catering events with alcohol, you may be required to provide a chef and buffet workers to service food. You state that these servers and chefs are not in a position to handle liquor, but are resent solely to serve and maintain food.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Gu Genetti's Hotel & Restaurant, Inc., is the holder of hotel liquor license No. H-3522 (LID 6876) for premises located at 1341 North Church Street, Hazleton, Pennsylvania.

OPINION: As you seem to know, on June 28, 2011, Governor Corbett signed House Bill No. 148 into law. Now known as Act 11 of 2011, the bill made changes to numerous sections of the Liquor Code, including the creation of an off-premises catering permit. On July 5, 2012, Governor Corbett signed House Bill No. 2267 (P.N. 3786) into law. Now known as Act 116 of 2012 (the "Act"), this bill made changes and clarifications to the off-premises catering permit law, among other issues. As a current hotel licensee, your entity would likely be eligible to obtain an off-premises

catering permit (“OPCP”), assuming all requirements are met. An OPCP allows its holders to hold a catered function off its licensed premises and on otherwise unlicensed premises. [47 Pa. C.S §§ 4-406(f), 4-442(f)].

Sales of alcohol at the catered function are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises. However, no sales for take-out are permitted. A licensee holding an OPCP may sell alcohol together with food for consumption on the premises. [Pa. C.S. §§ 406(f), 442(f), 446(b)]. Licensees that obtain an OPCP are allowed to transport the alcohol to and from their licensed premises to the site of the catered premises. [§§ 4-406(f), 4-442(f)].

The Act also states that all servers at the off-premises catered function must be RAMP-certified. [47 P.S. § 4-406(f)(2)]. It is likely this wording that has prompted your questions. There are other restrictions and regulations, not necessarily relevant to your questions, which may be found on the Board’s website at <http://www.lcb.state.pa.us>, then click on “Legal,” and then on “Legislative Updates.”

In response to your first question, the law does not define “serving staff.” However, “alcohol service personnel” is a defined term in the Liquor Code and means “any employe[e] of a licensee such as a bartender, waiter or, in the case of a distributor or importing distributor, a salesperson whose primary responsibility includes the resale, furnishing or serving of liquor or malt or brewed beverages. It shall also mean any employe[e], such as a doorperson, whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises.” [47 P.S. § 1-102].

In response to your second and third questions, the law states that all staff at an OPCP event must be RAMP-certified. In Advisory Opinion No. 12-244, attached for your convenience, this office opined that any employees of an OPCP licensee whose primary responsibility at the catered function is to sell and/or serve alcoholic beverages, or to check identifications of those attempting to gain access to the catered function, must be RAMP-certified pursuant to section 406(f)(2).

Any employee of an OCPC licensee whose primary responsibility at the catered event does not involve the sale and/or service of alcoholic beverages, or checking identifications (e.g., buffet staff and chefs), would not be required to obtain RAMP certification, although a licensee could, on its own volition, require such employees to be RAMP-certified.

Next, please note that anyone aged sixteen (16) but under the age of eighteen (18) may only clear tables, serve food, and perform similar duties regardless of whether they are working at your licensed premises or at an off-premises catered function.

You may not employ anyone younger than sixteen (16) years of age. [47 P.S. § 4-493(13), 40 Pa. Code § 3.92(b)]. Any employee under eighteen (18) years of age may be subject to other restrictions and may need working papers and other relevant documents under the Child Labor Law.

Should you have any questions and/or concerns regarding this matter, please feel free to once again contact this office.

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 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

Enclosure: Advisory Opinion No. 12-244

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-102