

August 15, 2013

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Candice Chilek

Re: Business Model Questions

Dear Ms. Chilek:

ISSUE: This is in response to your e-mail sent July 31, 2013, wherein you ask how the liquor license might be affected if your restaurant's business model shifted from a "day to day restaurant" to catering and special events. You also advise that you may be interested in selling your liquor license and ask how to begin that process.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Thomas Properties, LLC, holds Restaurant Liquor License No. R-16381 (LID 62430) for the premises located at 4810 Birney Avenue, Moosic, Pennsylvania.

OPINION: Section 102 of the Liquor Code defines a 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, including bar seats, accommodating at least thirty persons at one time. The board shall, by regulation, set forth what constitutes tables and chairs sufficient to accommodate thirty persons at one time." [47 P.S. § 1-102].

With regard to how often the restaurant must be open, section 474.1 of the Liquor Code provides:

A restaurant, an eating place retail dispenser, hotel, importing distributor and distributor licensee whose licensed establishment is not in operation for fifteen consecutive days shall return its license for safekeeping with the Board no later than at the expiration of the fifteen-day period. The license may only be reissued from safekeeping in the manner set forth by the Board through regulation.

[47 P.S. § 4-474.1]. Further, section 7.31 (a) of the Board's Regulations provides:

A licensee whose licensed establishment is not in operation for 15 consecutive days shall return his license and, if a liquor licensee, his Wholesale Purchase Permit Cards, to the Board not later than the expiration of the 15-day period. The return of the licensing card will not invalidate the license, which will be held in safekeeping for the benefit of the licensee and be available for his use when operations are resumed at the licensed premises, or for transfer.

[40 Pa. Code § 7.31(a)]. Therefore, in order for you to retain your restaurant liquor license, the restaurant cannot be closed for fifteen (15) or more consecutive days. However, the restaurant could be closed for fourteen (14) consecutive days and then open and operational for at least one (1) day. If the restaurant is closed for fifteen (15) or more consecutive days, the license must be placed in safekeeping. Please note that if a license is placed in safekeeping, then the (formerly) licensed premises is treated as unlicensed premises for purposes of the Liquor Code.

With regard to catering, please note that recent changes in the Liquor Code allow certain licensees, such as restaurants, to obtain an “off-premises catering permit” (“OPCP”). The OPCP allows the licensee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. [47 P.S. § 4-406(f)]. A “catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.” [47 P.S. § 1-102]. An applicant must notify not only local police, but also the Bureau, of all catered functions at least seven (7) days in advance. [47 P.S. § 4-406(f)(9)].

The Liquor Code requires that all “servers” at an off-premises catered function must be in compliance with the Responsible Alcohol Management Program. [47 P.S. § 4-406(f)(2)]. Be advised that section 102 of the Liquor Code defines “alcohol service personnel” as:

any employee 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 employee, such as a doorman,

whose primary responsibility is to ascertain the age of individuals who are attempting to enter the licensed premises.

[47 P.S. § 1-102].

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. [47 P.S. § 4-406(f)]. Licensees that obtain an OPCP are allowed to transport the alcohol to and from their licensed premises to the site of the catered premises. [Id.].

With regard to selling your liquor license, you are advised to seek assistance from private counsel, as this office is not authorized to provide such guidance.

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

cc: Pennsylvania State Police,
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