

Randy Leonard
VIA E-MAIL: randyjayleonard@gmail.com

RE: Using Fruit From Liquor Bottles

Dear Mr. Leonard:

ISSUE: This is in response to your e-mail of August 6, 2013, forwarded to this office for handling, in which you inquire about using fruit from bottled moonshine as a garnish for drinks. Specifically, you state that you work at an unidentified bar which is considering crafting a line of drinks made from Midnight Moon brand moonshine, which is packaged with fruit in the original bottle. The question is whether the bar can use a specific garnish tray for the fruit from the moonshine bottle. You give an example of someone ordering a Cherry Coke, into which you would put one of the Midnight Moon-bottled cherries as a garnish.

For the purpose of this response, it is assumed that the bar you reference holds a license issued by Pennsylvania Liquor Control Board ("Board").

OPINION: There is nothing in the Liquor Code or the Board's Regulations that addresses this issue; however, please note that care must be taken not to use liquor-marinated fruit such as described in drinks that are reasonably believed to be alcohol-free. Your example of using moonshine-marinated cherries in a Cherry Coke is one that could raise concerns if inadvertently served to a minor, a visibly intoxicated person, or to persons not desiring any alcohol content in their drink. Licensees are strictly prohibited by Liquor Code section 493(1) [47 P.S. Section 4-493(1)] from selling, furnishing and/or giving alcohol, and from permitting the sale, furnishing or giving of alcohol, to minors (people under twenty-one (21) years of age) or visibly intoxicated persons. Under such circumstances, a licensee may be subject to fines and/or license suspension or revocation. Additionally, the use of such fruit should be clearly described to enable the consumer to make an informed decision prior to consumption.

Further, there are rules pertaining to infusion of liquors. Section 491(10) of the Liquor Code makes it unlawful for licensees to fortify, adulterate, or contaminate any liquor, except as permitted by the Board's Regulations, or to refill wholly or in part, with any liquid or substance whatsoever, any liquor bottle or other liquor container. [47 P.S. Section 4-491(10)]. Therefore, a licensee could not refill liquor bottles with the infused spirits. It is permissible for infused spirits to be combined or prepared in glass containers or jars, such as a decanter or infusion jar, temporarily stored, and then served by the glass. It is also permissible to premix a cocktail and keep it in an infusion jar, but the Liquor Code prohibits creating an infusion within the original liquor bottle or storing the infusion overnight. Restaurant licensees are permitted to sell liquor only for consumption on the licensed premises. Sales of infused liquor for consumption off the licensed premises are not permitted. [47 P.S. Section 4-406].

Please be advised that food items that contain potable (i.e., drinkable) alcohol could not be sold for consumption off premises if the items contain more than one-half of one percent (0.5%) of alcohol by volume. Section 401(a) of the Liquor Code restricts hotel, restaurant, and club licensees to the sale of liquor for consumption on the premises. [47 P.S. Section 4-401(a)]. Section 102 of the Liquor Code defines "liquor" as "any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, ... which contain more than one-half of one percent of alcohol by volume...." [47 P.S. Section 1-102].

Additionally, since the Pennsylvania Department of Agriculture has general oversight over the preparation and sale of food, you may want to contact that agency for its input. You can reach it at 1-866-366-3723 or on the website www.agriculture.state.pa.us.

If you have any further questions or concerns regarding these matters, please do not hesitate to 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

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

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