

September 11, 2013

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Andrew Thomas

Re: Hours for Sales by Hotel Licensee

Dear Mr. Thomas:

ISSUE: This is in response to your e-mail dated September 6, 2013, in which you ask for clarification of the legality of a hotel licensee selling six (6)-packs of beer to hotel guests between the hours of 2:00 a.m. and 7:00 a.m. You also ask about the legality of patrons or non-employees walking behind the bar to access the “to-go” beer cooler.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that JAIRAM 7, Inc. is the holder of Hotel Liquor License No. H-5910 (LID 66977) for premises located at 1245 Harrisburg Pike in Carlisle, Pennsylvania. There is also an amusement permit, a Sunday sales permit, and an extended hours food permit.

OPINION: Sales of alcoholic beverages by hotel licensees must cease at 2:00 a.m. regardless of where the patron intends to consume it. [47 P.S. § 4-406(a)(2)]. By way of background, the holder of a hotel liquor license is authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel habitually used for the serving of food to guests or patrons, and to guests in their private rooms in the hotel. [47 P.S. § 4-406(a)(1)]. It is permissible to allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain on the hotel property. [47 P.S. § 4-406(e)].

Please also note that section 499(a) of the Liquor Code provides that all patrons must vacate the licensed premises no later than one-half (½) hour after legal alcoholic beverage service time expires. [47 P.S. § 4-499(a)]. This vacating of the premises applies to licensed areas only. It must be noted that there is an exception to the requirement that patrons vacate a licensed premises. That exception is set forth in section 499(b) of the Liquor Code, specifying that a liquor licensee may remain open between the hours of 2:00 a.m. and 7:00 a.m. for the purpose of serving food and non-alcoholic beverages on any day, if such licensee either possesses or is eligible to

purchase a Sunday sales permit and receives an extended hours food permit. [47 P.S. § 4-499(b)]. Such permits do not extend the hours of sale for alcoholic beverages, nor do they allow the sale of beer-to-go after 2:00 a.m.

Regarding your second question, as the Liquor Code and Board's Regulations are silent on the issue, the location of the cooler on the licensed premises would be within the discretion of the licensee so long as the cooler is located on the licensed portion of the premises. There may be a "house rule" that prohibits patrons and non-employees from walking behind the bar, but it is not a Board requirement.

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

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. 13-414