

October 17, 2013

Telephone: (717) 783-9454

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Douglas Hager

RE: Off Premises Catering Permit

Dear Mr. Hager:

ISSUE: This office is in receipt of your e-mail, dated September 7, 2013, wherein you indicate that you want to have an Oktoberfest event at your unlicensed deli. You explain that you own another restaurant, Prost, LLC, d/b/a Brauhaus Schmitz (“Prost”), which holds a liquor license and an off-premises catering permit (“OPCP”), and ask whether the unlicensed deli may contract with Prost to cater the Oktoberfest event. You further indicate that you understand “catering” is defined as providing food as well as alcoholic beverages, and ask whether under this definition Prost must be the sole provider of the food offered at the Oktoberfest event or whether Prost may only provide alcoholic beverages. Finally, you ask if Prost is not permitted to cater the event, what the rules and guidelines are for sampling or giving away free beer.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Prost, LLC holds Restaurant Liquor License No. R-1610 (LID 61162) for premises located at 718 South Street, Philadelphia, Pennsylvania.

OPINION: As you are aware, certain licensees, including restaurant licensees, may obtain an OPCP, which allows a permittee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. [47 P.S. §§ 4-406(f), 4-442(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].

Neither the Liquor Code nor the Board’s Regulations prohibit the host of a catered function from engaging multiple vendors to sell food or other items or services. However, the enactments creating the off-premises catering permit envisioned that one (1) licensee vendor obtaining such a permit from the Board would be responsible

for selling all alcohol at the catered function, and that the licensee's alcohol service personnel would all be Responsible Alcohol Management Program ("RAMP")-certified.

Additionally, there is no provision regarding the type of food that must be made available. However, this office has previously given guidance to a restaurant licensee which indicated that merely providing hot dogs and pretzels to patrons does not meet the requirement of section 102. [LCB Advisory Opinion Nos. 03-083 and 09-159].

Therefore, in light of the above, you are not limited to Prost being the sole provider of the food offered at the Oktoberfest event. However, Prost cannot just supply the alcohol; it must also supply food.

Regarding your question as to the rules and guidelines for giving away beer, please be advised that there is no prohibition in the Liquor Code against an unlicensed entity, such as your deli, giving free or complimentary alcoholic beverages to attendees at an event, provided that there is no charge to access the alcohol. However, please be advised that you cannot insulate yourself from your responsibilities as a licensee by subversively claiming that you were acting in an individual capacity or as a corporate officer of your unlicensed deli. [See Pennsylvania Liquor Control Board v. La Caffe, 672 A.2d 849 (Pa. Cmwlth. 1996)].

So long as there is no charge for the alcohol, you may provide those who are twenty-one (21) years of age or older and who are not visibly intoxicated, complimentary alcoholic beverages. Be aware, however, that the alcohol provided must truly be free. In other words, the provision of the alcohol cannot be predicated upon the purchase of a meal, an admission ticket, donation or payment of any other fee, etc. Accordingly, anyone who is over twenty-one (21) and not visibly intoxicated must be able to request and receive a complimentary alcoholic beverage.

Additionally, please be advised that any alcohol dispensed in an unlicensed establishment must be legally procured in the Commonwealth of Pennsylvania and all associated taxes must be paid. Therefore, you may wish to maintain a copy of the receipt from the distributor or some other proof that the alcohol was acquired legally.

Further, please note that establishments not licensed by the Board are subject to local ordinances and the provisions of the Pennsylvania Crimes Code. Section 7327 of the Crimes Code prohibits the storage of alcohol for the purposes of consumption between the hours of 2:00 a.m. and 8:00 a.m. on business premises owned, operated

or controlled by any person who is not licensed under the Liquor Code. [18 Pa.C.S.A. § 7327]. You may also wish to contact the local municipal government or county District Attorney regarding any further restrictions and/or penalties that may exist.

Regarding your question as to the rules and guidelines for sampling beer, please be aware that there is a distinction between sampling promotions and tastings. A sampling promotion is intended to introduce consumers to a manufacturer's product and must adhere to the following criteria:

- (a) Samples may be provided by manufacturers or their representatives, licensed distributors and importing distributors to unlicensed customers. Samples of liquor to licensed customers shall conform to § 13.81 (relating to samples of liquor).
- (b) Samples shall be in unopened containers of the smallest commercially available size.
- (c) Providing samples may not be conditioned upon any purchase requirement.
- (d) Samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises.
- (e) Samples are limited to one container per patron in any offering.

[40 Pa. Code § 13.231 and Board Advisory Notice No. 10 (6th Revision)].

Tasting or tasting events are different from sampling promotions, and are defined in the Board's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quality and availability. [40 Pa. Code § 13.201]. When tastings are conducted by licensed vendors, distributors, importing distributors and manufacturers or their agents or employees twenty-one (21) years of age or older upon licensed or unlicensed premises, they must adhere to the following:

- products used are legally procured, properly registered and tax paid;
- there is no purchase requirement associated with the tasting;
- no more than one (1) standard size alcoholic beverage of each product shall be provided to each tasting participant.

[40 Pa. Code § 13.211 and Board Advisory Notice No. 10 (6th Revision)].

Board Regulations provide that a standard-sized alcoholic beverage is twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including

fortified wine), or one and one-half (1½) fluid ounces of spirits. [40 Pa. Code § 13.201].

Therefore, so long as the above conditions are met, a sampling or tasting event could be conducted on the unlicensed premises.

Should you have any additional questions, 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
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LCB Advisory Opinion No. 13-452