

October 30, 2013

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John Tosco  
Tosco's Pub and Grill, LLC  
822 Main Street  
Pennsburg, PA 18073

**Re: Using Hotel Bedrooms as Serving Areas**

Dear Mr. Tosco:

ISSUE: This is in response to your e-mail sent on October 28, 2013, wherein you advise that you have a hotel license, with six (6) rooms and an apartment on the upper floors, which you would like to convert into dining areas, where you could serve alcohol and food. You ask what you would need to do to start the process.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Tosco's Pub and Grill, LLC, holds Hotel Liquor License No. H-1578 (LID 55784) for the premises located at 822 Main Street in Pennsburg, Pennsylvania.

OPINION: Section 102 of the Liquor Code defines a "hotel" as follows:

'HOTEL' shall mean any reputable place operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least six, permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public.

[47 P.S. § 1-102].

Section 461 of the Liquor Code also establishes the current minimum requirements for a premises to obtain a hotel liquor license. [47 P.S. § 4-461]. The general definition at section 461(c) of a "hotel" is now as follows:

c. The word 'HOTEL' as used in this section shall mean any reputable place operated by a responsible person of good reputation where the public

may, for a consideration, obtain sleeping accommodations, and which shall have the following number of bedrooms and requirements in each case--at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode:

\* \* \*

(2) In municipalities having a population of three thousand and more but less than ten thousand inhabitants, at least sixteen permanent bedrooms for the use of guests.

[47 P.S. § 4-461(c)(2)]. Pennsburg has a population of approximately three thousand, eight hundred (3,800).

However, in 2006, this section of the Liquor Code was amended to provide that hotel liquor licensees that hold “grandfathered status” under subsection 461(c)(8) no longer need to maintain the number of bedrooms required by section 461(c). “Grandfathered” hotel licenses are those hotel licensees that were originally issued or applied for prior to September 1949. Note that this particular section does not exempt grandfathered hotel liquor licensees from the number of bedrooms required by section 102 of the Liquor Code.

Also in 2006, subsection 461(c)(9) was added to the Liquor Code. [47 P.S. § 4-461(c)(9)]. This subsection provides that hotel liquor licensees that hold grandfathered status under subsection 461(c)(8) no longer need to maintain *any* bedrooms for public accommodation – not even those required by section 102 of the Liquor Code – if they filed, by April 23, 2007, an application with the Board to be exempted from this requirement and the application is approved by the Board. Records of the Board indicate that your license received such an exemption on April 9, 2007. A copy of this letter is attached for your convenience.

The April 9, 2007, letter indicates that the former bedrooms could not be used as licensed serving areas. This is consistent with the law as it was in 2007. However, in 2010, further amendments to section 461(c) of the Liquor Code were made with regard to the permitted use of the rooms formerly used as bedrooms for public accommodation. That section now reads as follows:

(9) Upon application to and subject to inspection by the board, hotel licensees under clause (8) of this subsection shall no longer be required to maintain bedrooms for public accommodation. Such area may be used as licensed storage area or servicing area consistent with this act and existing regulations.

[47 P.S. § 4-461(c)(9)]. Accordingly, as your hotel meets the requirements set forth above, the rooms in question may be used as licensed storage areas or serving areas, as you see fit.

Please note that you will need to file for an extension of premises (Form PLCB-49), so that these areas are covered under the auspices of your hotel liquor license.

Please do not hesitate to contact this office should you have questions about the Liquor Code or the Board's Regulations.

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 – Letter of April 9, 2007

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. 13-475