

November 19, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

Richard McGarvey

**RE: Sidewalk Tables and Service**

Dear Mr. McGarvey:

ISSUE: This office is in receipt of your e-mail dated October 2, 2013, wherein you stated that, while you were in Pittsburgh, you observed that taverns had placed tables and chairs outside of their establishments and had servers pouring drinks and supplying food to the patrons. You inquire if that practice is legal and if so, whether you can do the same next year.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Aldo’s Lounge, LLC holds Restaurant Liquor License No. R-13951 (LID 66596) for premises located at 621-623-625 4<sup>th</sup> Avenue, Altoona, Pennsylvania.

In order to allow sales and service of alcoholic beverages beyond an existing licensed premises, a licensee must apply for an extension of its licensed premises to cover any additional area. Section 7.21(b)(2) of the Board’s Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. [40 Pa. Code § 7.21(b)(2)]. A licensee requesting such an extension must obtain and file with its application for extension of premises written approval issued by the proper authorities of the municipality in which the license is issued if the proposed extension includes a sidewalk. Extensions to the sidewalk or the contiguous vacant land must include a certification by the municipality approving operation of the licensee on the proposed extension area. Proposed extensions to the sidewalk will be subject to the conditions that patrons must be seated at a table in order to receive service, there must be no fewer than two (2) tables for service, and there may not be a service bar on the sidewalk. [40 Pa. Code § 7.21(d)]. Further, such extension applications must be accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of abutting streets and a plotting of the principal licensed premises.

It should be noted that you must have the exclusive right to occupy the outside area in order for it to apply for an extension of premises covering same. Once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and the Board's Regulations, including the prohibition on minors frequenting the premises. [47 P.S. § 4-493(14)].

Please note that it is the Board's Bureau of Licensing initially, and the three (3)-member Board ultimately, that decides whether a particular extension request is in compliance with the Liquor Code and the Board's Regulations, and whether or not to grant the extension.

In order to obtain an extension application, go to the Board's website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us), click on "For Licensees," then "Applications and Forms," then "Application Packet for Extension of Retail License to Cover Additional Premises."

Further, section 406.1 of the Liquor Code allows the Board to approve the extension of a restaurant liquor license to include a secondary service area with dimensions of at least one hundred seventy-five (175) square feet, enclosed on three (3) sides and with adequate seating. [47 P.S. § 4-406.1]. The secondary service area must be located on property having a minimum area of one (1) acre and, although it need not physically be connected to the original licensed premises, it must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare. [Id.]. Additionally, the original licensed premises and the secondary service area must be located on the same tract of land. The Liquor Code defines "tract" as "a contiguous expanse of land under the control of one person." [47 P.S. § 1-102].

The determination as to whether a particular area constitutes a public thoroughfare is made by the Board, following an investigation by the Bureau of Licensing, upon receipt of an application for extension of premises. See Gramland Properties, Inc. v. Pennsylvania Liquor Control Board, 807 A.2d 339 (Pa. Cmwlth. 2002). You may wish to submit your application to the Bureau of Licensing on a prior approval basis. Submitting an application on a prior approval basis allows the applicant to receive consideration of its application based on plans rather than the actual construction at the proposed premises or, in this case, the actual alteration of the existing premises.

**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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