

November 27, 2013

Telephone: (717) 783-9454

Fax: (717) 787-8820

Tami Beggs

Fitzies Pub

RE: Proposed Employee Party

Dear Ms. Beggs:

ISSUE: This is in response to your e-mail dated November 3, 2013, in which you inquire as to the permissibility of holding an employee Christmas party at your licensed premises on a Sunday. Your premises is closed on Sundays. You state that all food and liquor would be brought into the premises; no lights would be visible from the outside; only the backdoor and parking lot will be used. This would provide a casual venue and allow employees to use the pool table and dart boards.

Pennsylvania Liquor Control Board (“Board”) records indicate that Fitzies, Inc. is located at 143 Village Road, Listie, Pennsylvania, and holds Restaurant Liquor License No. R-16782 (LID 59545).

OPINION: Section 102 of the Liquor Code requires that a restaurant liquor licensee must be “habitually and principally used for the purpose of providing food for the public . . .” [47 P.S. § 1-102]. Section 491(6) of the Liquor Code requires a licensed premises to sell alcohol only in those areas open to the public, but does permit restaurant liquor licensees to host private affairs such as weddings or other special occasions, if they are arranged twenty-four (24) hours in advance. [47 P.S. § 4-491(6)]. So long as a licensee is principally and habitually open to the public, it would be permitted to close for a private gathering.

Section 406 of the Liquor Code [47 P.S. § 4-406] prohibits the sale of alcohol by licensed establishments after 2:00 a.m. on Sundays unless the restaurant holds a Sunday sales permit. If the Licensee does not hold such a permit, it cannot sell alcoholic beverages on a Sunday. Additionally, the Commonwealth Court has interpreted this prohibition to include a situation where other parties would use the premises for the consumption of alcohol. Without a Sunday sales permit, a

restaurant licensee may not allow private parties to use the premises for the consumption of alcohol on Sundays. Pennsylvania Liquor Control Bd. v. Mignogna, 120 Pa. Cmwlth. 405, 548 A.2d 689 (1988); Pennsylvania Liquor Control Bd. v. Buffalo Tavern, Inc., 118 Pa. Cmwlth. 306, 544 A.2d 1125 (1988). Furthermore, section 493(16) of the Liquor Code prohibits licensees from furnishing, serving or delivering alcoholic beverages at times when the licensee is not authorized to sell such beverages. [47 P.S. § 4-493(16)]. Therefore, since your establishment is not authorized to sell alcoholic beverages on Sunday, it would be impermissible for you to supply alcohol or for your guests to bring their own alcoholic beverages onto your licensed premises on a Sunday. However, you or your guests may provide food and nonalcoholic beverages on a Sunday at your establishment.

If you wish to apply for a Sunday permit, you may access the application online at www.lcb.state.pa.us, by clicking on “For Licensees,” then “Applications and Forms,” and finally selecting PLCB Form 318, “Application for Sunday Sales/Amusement Permit/Extended Hours Food License.” For additional information, you may contact Licensing at (717) 783-8250.

Please be advised that licensees are held strictly liable for violations of the Liquor Code and the Board’s Regulations that occur on their premises, regardless of whether their establishment is open to the public or hosting a private party. For example, a licensee hosting a private party could be cited by the Bureau for allowing unlawful gambling [40 Pa. Code § 5.32], or for using a loudspeaker or similar device so that the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee’s property line. [47 P.S. § 4-493(34)].

In closing, if you have any further questions or concerns regarding this matter or the Board’s Regulations, please do not hesitate to 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

Tami Beggs
November 27, 2013
Page 3

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. 13-509