

Tim Thomas

VIA E-MAIL: hallrental@circlevillevfd.org

RE: Serving of Alcoholic Beverages during Fundraisers

Dear Mr. Thomas:

ISSUE: This office is in receipt of your e-mail dated November 13, 2013, wherein you indicate that you manage the banquet facilities for your fire department which holds a catering club license. You ask the following questions regarding events that are held at the licensee's facilities: (1) during fundraiser activities, such as your "oldies dance" and "cash bash," are you permitted to open the bar as a cash bar; (2) if there is a cash bar at an event, do you need to sell tickets prior to the event; and (3) who is responsible for any penalties assessed if a citation is issued – the president, the chief of the establishment, or the owner of the liquor license?

Pennsylvania Liquor Control Board ("Board") records indicate that Circleville Vol. Fire Co. & Relief Assn. of North Huntingdon Township No. 6 ("Robbins Station") holds Catering Club License No. CC-6214 (LID 26129) for premises located at 129 Robbins Station Road, North Huntingdon, Pennsylvania.

OPINION: Your questions will be answered in the order that you presented them.

- (1) *During fundraiser activities, such as your "oldies dance" and "cash bash," are you permitted to open the bar as a cash bar?*

It is unclear from your e-mail whether attendees at your fundraiser activities will be members, non-members or both. Please be advised that generally non-members cannot purchase alcohol at a club. Section 406(a)(1) of the Liquor Code provides that "[n]o club licensee nor its officers, servants, agents or employees, other than one holding a catering license, shall sell any liquor or malt or brewed beverages to any person except a member of the club." [47 P.S. Section 4-406(a)(1)].

Patrons of a catering club may purchase alcoholic beverages from the club, even if they are non-members, as long as they are present on the licensed premises as part of a catered event. A catered event is one involving the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises or brought onto the premises already prepared, for accommodation of groups of non-members who are using the facilities of the club by prior arrangement, made at least twenty-four (24) hours in advance of the time of the function, and which is paid for by the non-members. [40 Pa. Code Section 5.83(a)]. Records must be kept showing the date and time catering arrangements were made, the name of the person or the organization making the arrangements, and the approximate number of persons to be accommodated. [40 Pa. Code Section 5.83(b)]. The club cannot self-sponsor a catered event.

These prohibitions on selling alcohol to non-members do not, however, preclude a club member from purchasing alcoholic beverages for non-member guests; nor do they preclude the non-member from being served alcohol purchased by a club member.

Additionally, there is nothing in the Pennsylvania Liquor Code or the Board's Regulations that prohibits a club from being open to the public (i.e., to non-members) for the sale of food and non-alcoholic beverages anywhere on its licensed premises.

However, it should be noted that the Board's Regulations require that the operations of a licensed club must conform to the club's constitution and bylaws at all times. [40 Pa. Code Section 5.81]. If the club's constitution or bylaws contain any provision prohibiting the service of alcoholic beverages to non-members, then the club must adhere to those restrictions. Likewise, if the club's constitution or bylaws prohibits the operation of a cash bar at fundraising events, the club must adhere to those restrictions.

In sum, you would be permitted to have a cash bar as part of a fundraiser, provided that there is no restriction contained in your club's constitution or bylaws. Additionally, you would be permitted to serve non-members at the cash bar if the fundraiser event is a catered event as described above.

- (2) *If there is a cash bar at an event, do you need to sell tickets prior to the event?*

It is unclear whether the tickets that you intend to sell are for admission to the event or if these tickets are for prize drawings. If the tickets are for admission to the event, there is nothing in the Liquor Code or the Board's regulations that would require the tickets to be sold prior to the event. However, if the club's constitution or bylaws contain any provision requiring the sale tickets prior to an event, then the club must adhere to those restrictions. [40 Pa. Code Section 5.81].

If the tickets are for prize drawings, be advised that section 5.32 of the Board's Regulations [40 Pa. Code Section 5.32] permits retail licensees to hold self-sponsored events, tournaments or contests on their licensed premises. Events, tournaments and contests are defined as "a competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants." [40 Pa. Code Section 5.30]. Events, tournaments, and contests that are sponsored by the licensee are subject to the following rules: there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; there may be no consumption of alcohol by participants as part of the event, tournament, or contest; the price of admission may not include a charge for or entitle the participant to receive an alcoholic beverage. [40 Pa. Code Section 5.32(e)].

Self-sponsored means paid for and carried out by the licensee. It would not be permissible for a third party to conduct such events, tournaments or contests. However, retail licensees may permit events on the licensed premises sponsored by groups constituting a league, or events for the benefit of, and officially sponsored by, *bona fide* charitable organizations that are qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations). [40 Pa.

Code Sections 5.32(d)(3)-(4)(i)]. A charitable organization event must be operated in accordance with the Solicitation of Funds for Charitable Purposes Act [10 P.S. Sections 162.1-162.24] and, if applicable, the Local Option Small Games of Chance Act [10 P.S. Sections 311-327] and the Bingo Law [10 P.S. Sections 308-308.1]. [40 Pa. Code Section 5.32(d)(4)(ii)].

It should be noted that gambling activities, while unlawful generally, may be considered to be lawful if conducted by an entity that holds a small games of chance permit. Therefore, you may wish to contact the County Treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine what activities are permissible with such a permit and what prize limits are permissible. You may also wish to contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion concerning whether the sale of such tickets would constitute unlawful gambling.

Further, be advised that if the club's constitution or bylaws contain any provision prohibiting the sale of tickets for prizes or the sale of such tickets prior to an event, then the club must adhere to those restrictions. [40 Pa. Code Section 5.81].

(3) *Who is responsible for any penalties assessed if a citation is issued – the president, the chief of the establishment, or the owner of the liquor license?*

Generally, the licensee is the entity assessed penalties if a citation is issued for a violation of the Liquor Code. However, be advised that Section 494 of the Liquor Code [47 P.S. Section 4-494] also provides criminal penalties for certain violations of the Liquor Code. Section 494(a) of the Liquor Code states:

Any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months, and for any subsequent offense, shall be sentenced to pay a fine not less than three hundred dollars (\$300), nor more than five hundred dollars (\$500), and to undergo imprisonment for a period not less than three months, nor more than one year, or both. If the person, at or relating to the licensed premises, violates section 493(1), (10), (14), (16) or (21), or if the owner or operator of the licensed premises or any authorized agent of the owner or operator violates the act of April 14, 1972 (P.L.233, No.64), known as 'The Controlled Substance, Drug, Device and Cosmetic Act,' or 18 Pa.C.S. Section 5902 (relating to prostitution and related offenses) or 6301 (relating to corruption of minors), he shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment for a period not less than three months, nor more than one year, or both.

[47 P.S. Section 4-494 (emphasis added)].

In addition to the prohibitions against serving minors set forth in the Liquor Code, please be aware that the Crimes Code also prohibits the selling or furnishing of alcoholic and nonalcoholic beverages to minors. Section 6310.1 of the Crimes Code provides that it is a misdemeanor of the third degree for a person to intentionally and knowingly sell, furnish or purchase with the intent to sell or furnish any liquor or malt or brewed beverage to a minor. [18 Pa.C.S.A. Section 6310.1(a)]. A person who is convicted of violating section 6310.1 may be sentenced to pay a fine of not less than one thousand dollars (\$1,000) for the first violation and a fine of two thousand five hundred dollars (\$2,500) for each subsequent violation and may receive a maximum term of imprisonment of up to one (1) year. [18 Pa.C.S.A. Section 6310.1(c)].

Similarly, section 6310.7 of the Crimes Code provides that it is a summary offense for someone to intentionally and knowingly sell or furnish nonalcoholic beverages to any person under twenty-one (21) years of age. [18 Pa.C.S.A. Section 6310.7]. The statute defines "nonalcoholic beverage" as "any beverage intended to be marketed or sold as nonalcoholic beer, wine or liquor having some alcohol content but does not contain more than 0.5% alcohol by volume." [i.d.].

Therefore, it is conceivable that penalties issued for these offenses could be assessed against the president, the chief of the establishment, or the owner of the liquor license if that individual violated one (1) or more of the above sections. However, be advised that since the Board does not have authority to interpret the Crimes Code, you may wish to contact the local police, the Pennsylvania State Police, or the county district attorney for an official opinion concerning whether a particular activity would constitute a criminal offense and the penalties to be imposed.

Please do not hesitate to contact this office should you have further questions.

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,
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LCB Advisory Opinion No. 13-529