

January 24, 2014

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Robert Huey

**RE: Catering Club and Food Concessionaire**

Dear Mr. Huey:

ISSUE: This is in response to your e-mails of December 8 and December 9, 2013 in which you ask whether your veterans' club may hire a person to run your kitchen, with that person paying the club a percentage of the income realized from food sales. You note that this person will pay taxes from food proceeds. You propose some alternate scenarios:

- (a) this kitchen operator would not be a member of your club; the club would be open to the public; and events would be advertised twenty-four (24) hours in advance;
- (b) this kitchen operator would not be a member of your club; it would be open only to club members; and the operation would be outlined in your club bylaws; or
- (c) this kitchen operator would be a member of your club; the club would be open to the public; and events would be advertised twenty-four (24) hours in advance.

You also ask if this kitchen operator, whether a member or a non-member, has to have its own catering license and if the club therefore would have to surrender its catering club license.

Board records indicate that General George C. Marshall Post No. 103 American Veterans of World War II, Inc. holds Catering Club Liquor License No. CC-5449 (LID 2505) for premises located at 123 Buttermilk Lane, Hopwood, Pennsylvania. You are the manager/steward of record.

OPINION: As you likely know, the Liquor Code generally prohibits clubs from selling alcohol to individuals who are not members of the club. [47 P.S. § 4-406(a)(1)]. An exception exists to this general rule for catering clubs. Patrons of a catering club can purchase alcoholic beverages from the club even if they are non-members, as long as they are 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 non-members. [40 Pa. Code § 5.82(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 § 5.83(b)]. Non-members who are part of a lawful catered event can be sold and/or served alcoholic beverages. The club cannot, however, self-sponsor a catered event. A catered event is an event arranged by a third party.

If a club does not sell food, it may permit a food concession, which sells food directly to patrons, to be operated by a person who is not an officer or employee of the club. The Liquor Code and Board's Regulations do not prohibit a club member from acting as a food concessionaire, so long as he or she is not an officer or employee of the club, and so long as all other requirements are met. The concessionaire may not hire a person who is an officer or employee of the club or who is a licensee or an employee of another licensee. [40 Pa. Code § 5.82(a)].

The concessionaire shall buy, prepare, sell and collect for the food, and receive the profits, and pay his or her own employees. Neither the concessionaire nor his or her employees are permitted to handle or dispense liquor or malt or brewed beverages; club employees are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages shall be presented to each member served. [40 Pa. Code § 5.82(b)].

Records covering operations of the concession shall be maintained for a period of two (2) years on the licensed premises. The records shall show the cost of food, supported by invoices; receipts from sale of food supported by cash register tape or guest checks; rental paid for the privilege and equipment used; the name and address, social security number and salary paid to each employee; and other expenditures. [40 Pa. Code § 5.82(c)].

The concessionaire, by definition and by regulation, is a third party to the licensee. So long as all catered events are truly being held on behalf of the third party and not as subterfuge to avoid the restrictions of the law as to the licensee, there is nothing in the Liquor Code or Board's Regulations that would preclude the scenario that you have described of having a food concessionaire "run the kitchen."

Be further advised that section 5.81 of the Board's Regulations [40 Pa. Code § 5.81] requires a club licensee to adhere to the provisions of its constitution and bylaws. Therefore, if your club's constitution or bylaws govern the procedures for a food concession, the club must comply, or risk citation by the Bureau of Liquor Control Enforcement for failure to adhere to the provisions of its constitution and bylaws.

Finally, a food concessionaire would not be licensed by the Board under your factual scenario; rather, the club would maintain its catering club license and the club would be responsible for all alcohol sales and service. You may also wish to contact the Department of Revenue for information regarding your proposed scenario.

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  
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