

February 26, 2014

Telephone: 717-783-9454

Fax: 717-787-8820

Greg Sutterlin

VIA Email: gets01@windstream.net

RE: Amplified music

Dear Mr. Sutterlin:

ISSUE: This office is in receipt of your email of January 27, 2014, in which you noted that you run Hotel Conneaut located on Conneaut Lake. You indicate the hotel is next to a vintage amusement park and a beach. You advise that this location has been the site of live entertainment for years. You advise you wish to hold outdoor musical events at the site located off the premises, and with power generated from off-premises. You indicate you are aware of section 5.32 of the Board's Regulations. You indicate that the location will be blocked from your licensed premises by a six (6) foot wall.

Pennsylvania Liquor Control Board ("Board") records indicate that Park Restoration, LLC is the holder of Hotel Liquor License No. H-5809 (LID 61478) for use by it at premises located at 12382 Center Street, Conneaut Lake, Pennsylvania.

OPINION: Section 493(34) of the Liquor Code provides that a licensee may not use or permit to be used inside or outside of the premises a loudspeaker or similar device whereby 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)]. If any music were amplified, it would be the source of a potential citation. Accordingly, this is true even if the amplified music is not located directly on the licensed premises. See Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Goodfellas, Inc., 850 A.2d 868 (Pa. Cmwlth. 2004).

There is no permit available which grants an exception to this statute; nor are there hours or days in which these provisions do not apply. However, section 493.1(b)

of the Liquor Code [47 P.S. § 4-493.1(b)] provides a mechanism for a municipality to obtain an exemption from section 493(34) of the Liquor Code. Specifically, section 493.1(b) provides as follows:

A municipality may file a petition with the board for an exemption from section 493(34) of this act for all the licensees within an identifiable area in the municipality. Prior to submitting a petition, the municipality shall adopt a local noise ordinance and a resolution adopted by its governing body confirming support of the petition, citing the noise ordinance and its intention to enforce the ordinance in place of section 493(34). Upon receipt of a petition, including a copy of the noise ordinance, a map of the area to be exempted and resolution, the board shall hold at least one (1) public hearing on the petition. The hearing may be held before a hearing examiner. The hearing shall take place within the identified area and must comply with the notice, recording and public participation requirements of 65 Pa.C.S. Ch. 7 (relating to open meetings). Within sixty (60) days after receipt of the petition, the board shall disapprove the petition for an exemption in its entirety or may approve an area more limited for which the exemption will be granted if the board finds that granting the petition shall have an adverse effect on the welfare, health, peace and morals of the residents living in the vicinity of the identified area; otherwise, the board shall approve the petition. The board may place additional conditions on its approval such as limiting the duration of the approval and any other condition the board deems appropriate. There shall be a right to appeal to the court of common pleas in the same manner as provided by this act for appeals from refusals to grant licenses.

[47 P.S. § 4-493.1(b)(footnotes omitted)].

You may wish to request that your municipality seek an exemption under this section, as Sadsbury Township, Crawford County does not currently have an exemption.

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

LCB Advisory Opinion No. 14-047