

March 14, 2014

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Nicky Devine

RE: Off-Premises Catering Permit for Public Festival

Dear Ms. Devine:

ISSUE: This is in response to your e-mail of February 24, 2014, in which you state that you are applying for an off-premises catering permit (“OPCP”), the filing deadline for which is March 1st, and you have several questions regarding the planned usage of such an OPCP at an unidentified “festival.” First, you note that OPCPs are only valid for five (5) hours, but your event is scheduled for ten (10) hours. You ask how this can be made to work. Second, you state that this event is free to the public and you ask whether this is a problem. Third, you ask if an applicant can receive a refund of the five hundred dollar (\$500.00) application fee if it is found not to be qualified for the intended single use.

While you identify yourself as the Festival Coordinator for the event and do not provide information regarding the identity of the licensee applying for the OCPC, there is substantial information on the internet indicating that the event in question is most likely the Annual 2nd Street Festival to be held on August 3, 2014, in the Northern Liberties neighborhood of Philadelphia, and the likely applicant on whose behalf you are inquiring is Manpants, LLC, holder of Restaurant Liquor License No. R-3735 (LID 50570) for premises located at 1201 North Frankford Avenue, Philadelphia, Pennsylvania.

OPINION: Pursuant to section 406(f) of the Liquor Code, holders of restaurant licenses, hotel licenses, eating place retail dispenser licenses, breweries holding a brewery pub license, and performing arts facilities licenses may apply for and obtain an “off-premises catering permit,” which allows the permittee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; no sales for take-out are permitted. [47 P.S. § 4-406(f)].

A “catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.” [47 P.S. §1-102].

As noted in section 406(f) of the Liquor Code:

(f) The holder of a hotel or restaurant liquor license may obtain an off-premises catering permit subject to section 493(33) to hold a catered function off the licensed premises and on otherwise unlicensed premises where the licensee may sell wine, liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture together with food, for consumption on those premises. Functions conducted under the authority of the permit shall be subject to the following:

- (1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;
- (2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;
- (3) each catered function shall last no longer than one day and not more than fifty catered functions may be held each calendar year by each license holder for use with a particular license;
- (4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;
- (5) a permit shall not be issued to an applicant whose license is in safekeeping;
- (6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);

(8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;

(9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the local police and the enforcement bureau at least seven days in advance of the event;

(10) written notice shall be provided to the board at least thirty days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least fourteen days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(11) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements of this act or has previously conducted a function that did not meet the requirements of this act;

(12) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the premises during the function or any activities related to the function;

(13) no catered function may be held for more than five hours per day and must end by midnight;

(14) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), for an event which has the sole purpose of raising funds for that nonprofit organization; or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(15) the catered function location shall be subject to section 493(34) of this act;

(16) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(17) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(18) a permit shall not be issued to a licensee for use in any location that is mobile; and

(19) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

[47 P.S. § 4-406(f)(footnotes omitted)].

In response to your first question, there is no legal mechanism by which you can overcome the restriction contained in section 406(f)(13) limiting the catered function to five (5) hours. In response to your second question, the fact that the catered function is free (with separate payment for alcohol and food) would not prevent it being considered a “catered function” under the Liquor Code. However, you must have an “identifiable group of persons,” not the general public, for which the “catered function” is being held. An OPCP cannot be issued for an event that does not comply with the Liquor Code or Board’s Regulations.

A possible remedy to the above two (2) issues might be a Special Occasion Permit. The benefits of this approach include the following: filing deadline is approximately thirty (30) days prior to the event, and not the statutory March 1st deadline imposed on OPCPs; sales by SOP holders are not limited to five (5) hours; and the application fee is lower than that required for an OPCP. This is the mechanism by which many similar community-based festivals are licensed for the temporary provision of alcohol.

Pursuant to section 408.4 of the Liquor Code, the Board may issue SOPs to eligible entities. [47 P.S. § 4-408.4]. These entities are listed in detail in the Liquor Code, but generally fall into categories such as certain non-profit (501(c)(3)) entities, fire and ambulance companies, nationally-chartered veterans’ groups, and the like.

Entities that qualify may obtain an SOP that would authorize them to sell liquor and/or malt or brewed beverages to persons twenty-one (21) years of age or older who are not visibly intoxicated. [47 P.S. §§ 4-408.4, 4-493(1)]. SOPs are generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. [47 P.S. § 4-408(i)]. The SOP is to be used as a means of raising funds for the holder, but can be used in conjunction with activities or events involving other entities. [47 P.S. § 4-408.4(m)]. The holder of an SOP may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)]. Please be advised, however, that if

the proposed event will be conducted on the licensed premises, it would be necessary for the licensee to de-license the area to be used for the SOP, as dual licensing of a particular premises, absent specific statutory authority, is generally prohibited.

You may find information, including an application form and instructions, on the Board's website at www.lcb.state.pa.us, then click "Licensees," then "Applications and Forms," and then select PLCB-1229 "Application for Special Occasion Permit."

Finally, in response to your third question, fees for OPCPs are non-refundable.

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. 14-081