

March 21, 2014

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Jeffrey Karver, Esquire
Boyd & Karver

RE: Extension of Premises

Dear Mr. Karver:

ISSUE: This office received your e-mail dated February 26, 2014, wherein you indicate that you represent Hurricane City, Inc. ("Hurricane City"). By way of background, you explain that your client previously operated an indoor restaurant and bar on the second floor of the main ski lodge during the winter months, and your client operated an outdoor tiki bar during warm weather. You indicate that when your client is operating the outdoor tiki bar, the indoor restaurant is used for storage and food preparation; no cooking is done indoors. You explain that all cooking is done outdoors by the patrons themselves on permanent outdoor grills. You do not indicate whether the tiki bar also has food available for patrons. However, you state that the tiki bar service areas are temporary structures that are erected each year by your client.

Regarding the licensing of the outdoor tiki bar, you explain that each year, your client files an application to extend the indoor licensed premises to include the outdoor tiki bar. You state that for the past two (2) years, your client has not operated the indoor licensed premises during the winter months; rather, your client has placed the license in safekeeping in the fall and removed the license from safekeeping in March or April. Under these circumstances, you ask whether your client may permanently license the outdoor tiki bar area. If so, you ask whether your client must maintain the permanent indoor licensed area.

Pennsylvania Liquor Control Board ("Board") records indicate that Hurricane City, t/a the Tiki Bar at Spring Mountain, holds Restaurant Liquor License No. R-10037 (LID 49630) for premises located at 757 Spring Mountain Road, Spring Mountain, Pennsylvania.

OPINION: Initially, be advised that section 102 of the Liquor Code, in pertinent part, defines a restaurant as follows:

a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs, including bar seats, accommodating at least thirty persons at one time.

[47 P.S. § 1-102]. Pennsylvania courts have concluded that an establishment is not a *bona fide* restaurant when there is insufficient food or facilities to feed thirty (30) people. [See Appeal of Albus, 149 A.2d 163 (Pa. Super. 1959)(*the kitchen was ten (10) feet by four (4) feet; there were twelve (12) sandwiches available, which could be served on ten (10) pieces of china*); Pennsylvania Liquor Control Bd. v. Dobrinoff, 471 A.2d 941 (Pa. Cmwlth. 1984)(*the food supply on hand consisted of two (2) pounds of chicken necks, a half-pound of cheese, a gallon of pickles, and three (3) cans, each, of sauerkraut and tomato sauce*); Mitchell v. Pennsylvania Liquor Control Bd., 476 A. 2d 479 (Pa. Cmwlth. 1984)(*a liquor control enforcement officer visited the licensed premises on four (4) occasions and ordered a sandwich each time, but the licensee was never able to serve the officer a sandwich; the officer never saw a menu or any other patrons eating*)].

From the information provided in your e-mail, it is unclear whether the outdoor tiki bar area would meet the definition of a restaurant as set forth above. If the tiki bar area complies with the above definition, then it would be possible to permanently and exclusively extend the licensed premises to only include the outdoor tiki bar area. Section 7.21(b)(2) of the Board's Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. [40 Pa. Code § 7.21(b)(2)]. Such an extension can be requested on a temporary or permanent basis. Once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and the Board's Regulations.

The forms necessary to apply for extension of licensed premises may be acquired from the Board's Bureau of Licensing ("Licensing"). Licensing's telephone number is (717) 783-8250. In addition, the Board's website allows licensees to download forms necessary to apply to extend their licensed premises. You can obtain these forms via the Internet by going to the Board's website at <http://www.lcb.state.pa.us>. Once there, you should click on "For Licensees;" you would then click on "Applications & Forms." The application packet entitled

“Application Packet for Extension of Retail License to Cover Additional Premises,” is the packet you would need.

Further, be advised that it is Licensing which makes the decision as to whether a particular extension request is in compliance with the Liquor Code and the Board’s Regulations, and ultimately it is the three (3)-member Board that will determine whether or not to grant the application.

Additionally, regarding the continued operation of the indoor licensed premises, please note that you could submit written notification to Licensing that you wish to de-license that portion of the licensed premises. Licensing would then determine whether the premises continued to meet all of the relevant licensing requirements.

Should you have any additional questions, do not hesitate to 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 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

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