

April 3, 2014

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Andrew Ernst
Executive Sous Chief
Wyndham Gettysburg
95 Presidential Circle
Gettysburg, PA 17325

RE: Hotel Licensing

Dear Mr. Ernst:

ISSUE: This office is in receipt of your e-mail dated February 4, 2014, wherein you state that you are opening a café/gift shop in your hotel lobby on the premises. You ask if you would be permitted to sell wine and beer for off-premises consumption from this café. You note that the current lounge/bar currently sells wine and beer for off-premises consumption.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Gateway Gettysburg Hotel Conference Center Partners LP t/a Wyndham Hotel holds Hotel Liquor License No. H-6039 (LID 55882) for premises located at 95 Presidential Circle, Gettysburg, Pennsylvania.

OPINION: The Liquor Code defines a hotel as “any reputable place operated by responsible persons of good reputation where the public may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least six, permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public.” [47 P.S. § 1-102]. The holder of a hotel liquor license is authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel habitually used for the serving of food to guests or patrons, and to guests in their private rooms in the hotel. [47 P.S. § 4-

406(a)(1)]. The holder of a hotel license (or the holder of a restaurant license located in a hotel) may allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain on the hotel property. [47 P.S. § 4-406(e)].

If the café/gift shop is included in the licensed area and meets the definition of a “hotel,” alcoholic beverages may be sold from it. However, please note that non-food items such as over the counter medicines, deodorant, shampoo and other traditional gift shop items, may not be sold from a licensed area unless approved by the Board. Sale of sundries by Licensee upon its licensed premises is prohibited as the conduct of “another business,” unless Licensee requests and receives the Board’s approval to allow the sale of sundries. [40 Pa. Code § 3.52(c)].

Also, please note that as stated above, hotel licensees are authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel habitually used for the serving of food to guests or patrons, and to guests in their private rooms in the hotel. [47 P.S. § 4-406(a)(1)]. The holder of a hotel license (or the holder of a restaurant license located in a hotel) may allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain on the hotel property. [47 P.S. § 4-406(e)]. A hotel liquor license does permit the sale for consumption off-premises of up to one hundred ninety-two (192) fluid ounces of malt or brewed beverages in a single sale to one (1) person. [47 P.S. § 4-401]. However, the sale of wine for off-premises consumption is generally prohibited. Section 406(e) of the Liquor Code provides a limited exception that:

the holder of a hotel license or a restaurant license may allow persons who have purchased, but only partially consumed, a bottle of wine on the premises to remove the bottle from the premises, so long as the bottle was purchased in conjunction with a meal which was consumed on the premises and so long as the bottle is resealed.

[47 P.S. § 4-406(e)].

A “meal” is defined as “food prepared on the premises, sufficient to constitute breakfast, lunch or dinner; it shall not mean a snack, such as pretzels, popcorn, chips or similar food.” [Id.].

Therefore, the only off-premises sales of wine that could be conducted by a hotel licensee are partially consumed bottles as discussed above.

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. 14-126