

April 23, 2014

Telephone: (717) 783-9454

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Maggie Sargent, General Manager
Helium Comedy Club
2031 Sansom Street
Philadelphia, PA 19103-4416

RE: Pole Dancing

Dear Ms. Sargent:

ISSUE: This is in response to your e-mail dated April 9, 2014, wherein you state that you are general manager of the Helium Comedy Club in Philadelphia, which plans to host a show at 12:00 a.m. (midnight) on Saturdays which would include pole dancing. You advise that the pole dancing would consist of acrobatic-type pole dancing, not exotic dancing, and would involve two (2) poles installed on a stage. You ask whether pole dancing of an acrobatic nature would be permissible.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that Center Stage Comedy, L.P. holds Restaurant Liquor License No. R-6572 (LID 54334) for use by it at 2031-33 Sansom Street, Philadelphia, Pennsylvania. Center Stage Comedy, L.P. also holds an amusement permit and a Sunday sales permit.

OPINION: There is nothing in the Liquor Code or the Board's Regulations that currently prohibits pole dancing, exotic or acrobatic, at an establishment's licensed premises. In other words, the pole dancing you described would be permissible.

Although section 493(10) of the Liquor Code [47 P.S. § 4-493(10)] and section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] prohibit liquor licensees from permitting any lewd, immoral, or improper entertainment in a licensed premises or

in any place operated in connection therewith, those provisions were struck down as unconstitutional by the Third Circuit Court of Appeals, in so far as they prohibited “lewd” entertainment in any establishment holding a liquor license. Conchatta Inc. v. Miller, 458 F.3d 258 (3rd Cir. Pa. 2006). In conjunction with an earlier United States District Court decision that struck down the Board’s prohibitions as to immoral or improper entertainment, section 493(10) of the Liquor Code and section 5.32 of the Board’s Regulations are unenforceable to the extent that they prohibit lewd, immoral or improper entertainment.

Be advised, however, that the activities that you described may violate and/or be regulated by the Crimes Code or local ordinances. Because this office does not provide opinions pertaining to the Crimes Code or local ordinances, you may wish to contact the Pennsylvania State Police, your local police, and/or the District Attorney’s office in your county, for their opinions regarding such activity.

Assuming that such activity does not violate the Crimes Code or local ordinances, and depending on the particular circumstances surrounding the dancing, a licensed establishment may need to obtain an amusement permit to allow such activities.

An amusement permit authorizes dancing, theatricals, floor shows and motion picture exhibitions in licensed premises or places operated in connection therewith. [47 P.S. § 4-493(10); 40 Pa. Code § 5.31]. So long as Center Stage Comedy, L.P. holds a current amusement permit, no additional permits would be required.

Finally, with regard to the pole dancing show starting at 12:00 a.m. (midnight), please be advised that no alcohol may be sold after the legal closing hour and no discount pricing may occur between 12:00 a.m. (midnight) and the legal closing hour for restaurant, hotel, and eating place licensees. [40 Pa. Code § 13.102(a)].

If you have any further questions or concerns regarding this matter, the Liquor Code or the Board’s Regulations, please do not hesitate to again 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

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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. 14-146