

June 5, 2014

Telephone: (717) 783-9454

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Deanna Trio-Schomper

JB III Enterprises

RE: Kitchen Hours for Restaurant Liquor License

Dear Ms. Trio-Schomper:

ISSUE: This is in response to your e-mail dated May 7, 2014, in which you inquire whether your kitchen must be open at all times that your bar is open and whether you are required to post kitchen hours.

Pennsylvania Liquor Control Board (“Board”) records indicate that JB III Enterprises holds Restaurant Liquor License No. R-11739 (LID 68631) for use at its premises located at 1002 Church Avenue, Johnstown, Pennsylvania.

OPINION: There are no specific requirements or prohibitions concerning kitchen hours or their public posting related to restaurant liquor licensees in the Pennsylvania Liquor Code (“Liquor Code”) or Regulations. However, licensees are required to abide by all appropriate provisions in the Liquor Code and regulations, and will be held strictly liable for any violations thereof.

Section 102 of the Liquor Code 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. The board shall, by regulation, set forth what constitutes tables and chairs sufficient to accommodate thirty persons at one time.” [47 P.S. § 1-102].

Since you possess a restaurant liquor license, you must maintain the ability to feed thirty (30) or more people even if your kitchen is “closed” while you are serving alcohol. [47 P.S. § 1-102]. Additionally, your establishment should “principally and habitually” be used for providing food to the public and you should ensure that

the service of alcohol does not take priority over your service of food at any time. [47 P.S. § 1-102]. Pennsylvania courts have offered guidance on the types and amount of food that is sufficient in order to comply with the requirements imposed by the Liquor Code. *See Appeal of Albud*, 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*); and *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*).

Additionally, this office has previously advised that; preparing and providing hot dogs and an occasional offering of “full dinners” meets the food requirement of section 102, there is nothing in the Liquor Code or Board’s Regulations that prohibits a licensee from offering food that is prepackaged so long as it is prepared at the premises, and nothing requires that food be made from scratch in order for a licensee to meet the requirements of section 102. [LCB Advisory Opinion Nos. 03-083, 07-523, and 09-159].

You indicate in your correspondence that you are aware of the Liquor Code’s requirement to maintain available food for at least thirty (30) persons, and that it is your practice to open your bar area to patrons at 11:30 a.m. on Mondays and Sundays, while the kitchen does not open until 4:00 p.m. on those days. Since there is no specific requirement or prohibition on kitchen hours or the posting of such hours, you may operate your kitchen according to your business needs, but you must ensure that you are compliant with the definition of “restaurant” under the Liquor Code, including the provisions related to serving food as the principal part of your business, and maintaining enough substantive food in accordance with the Courts’ and the Board’s directives at all times that you serve alcohol whether your kitchen is designated as “open” or “closed.”

In closing, if you have any further questions or concerns regarding this matter 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

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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. 14-252