

June 18, 2014

Telephone: (717) 783-9454

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Rick Greene
President
Northern Wayne Fire Company Inc.
1663 Crosstown Highway
Lakewood, PA 18439-3934

Re: Question on Special Occasion Permit

Dear Mr. Greene:

ISSUE: This correspondence is in response to your e-mail dated May 18, 2014, wherein you indicate that Northern Wayne Fire Company Inc., which previously obtained special occasion permits (“SOPs”) from the Pennsylvania Liquor Control Board (“Board”), has been approached by another entity, “Campfire Festival,” about providing an SOP for a music festival that it is hosting at a local summer camp over Labor Day weekend. You explain that, in exchange for your fire company providing an SOP for the event, Campfire Festival would like to run the alcohol booths at the event and then give your fire company a percentage of the profits. However, it is your understanding that your fire company would need to be responsible for acquiring and selling any alcoholic beverages pursuant to an SOP that it obtains and would need to retain one hundred percent (100%) of the profits from such sales. Accordingly, you seek confirmation of whether your understanding is correct.

OPINION: As you already appear to be aware, certain “eligible entities,” as defined in section 102 of the Liquor Code [47 P.S. § 1-102], may apply for and obtain an SOP, which authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day on any day for which the SOP is issued. [47 P.S. § 4-408.4(k)]. SOPs are generally issued for a period of not more than six (6) consecutive or nonconsecutive days during a calendar year. [47 P.S. § 4-408.4(i)].

The purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. [47 P.S. § 4-408.4(m)]. An SOP may be used in conjunction with activities and events involving other entities; however, no one other than the holder of the SOP may acquire a pecuniary interest therein. [Id.].

Consequently, only the named holder of the SOP is authorized to sell alcoholic beverages pursuant thereto, and all proceeds from the sale of alcohol pursuant to an SOP must be collected by the holder of the SOP. Nevertheless, there is nothing in the Liquor Code or the Board's Regulations that would prohibit the holder of an SOP from subsequently making a voluntarily contribution to third parties. To state it differently, an eligible entity may obtain an SOP, use it to acquire and sell alcohol at an event being hosted by or in conjunction with a third party, retain the proceeds from the sale of alcohol, and then subsequently make a voluntary contribution of a portion of the proceeds from the sale of alcohol to the third party. This type of partnering arrangement is often suggested by this office as an alternative to non-profit organizations that are looking to obtain an SOP, but do not qualify as an eligible entity under the Liquor Code.

Therefore, as you correctly observed, if your fire company obtains an SOP for the event being hosted by Campfire Festival, only the fire company would be permitted to acquire and sell alcohol pursuant to that SOP. The fire company could hire Campfire Festival to run the booth for them pursuant to some sort of contractual agreement, but the fire company would have to maintain ultimate decision-making authority and control so as to avoid conveying an unlawful pecuniary interest in the SOP. Moreover, as you also correctly observed, the fire company would be required to initially retain all of the proceeds from the sale of alcohol relative to the SOP. However, the fire company could subsequently make a voluntary contribution of a portion of the proceeds from the sale of alcohol to Campfire Festival, if it so chooses.

Should you have any additional questions regarding the Liquor Code or the Board's Regulations, please feel free to once 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

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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. 14-345