

June 18, 2014

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Ben Haugh
Food and Beverage Manager
Roundtop Mountain Resort

Re: Donated Beer

Dear Mr. Haugh:

ISSUE: Your e-mail of May 3, 2014 states that an event is scheduled to be held at Ski Roundtop wherein a non-profit entity is proposing to procure donated beer to be served on the property, but not on the licensed portion of the venue. Tickets will be offered for purchase prior to, and on the day of, the event for activities related to summer activities at Ski Roundtop. Along with several food items and the activities, the donated beer would be offered as part of the ticket price. You inquire whether this is permissible.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Ski Roundtop Operating Corp. holds Restaurant Liquor License No. R-17956 (LID 61951) for use by it at premises located at 925 Roundtop Road, Lewisberry, Pennsylvania.

OPINION: Nothing in the Liquor Code or the Board’s Regulations would prohibit a non-profit entity from receiving donated beer, provided that such beer is initially lawfully obtained from a manufacturer, importing distributor or distributor. Furthermore, nothing in the Liquor Code or the Board’s Regulations prohibits the subsequent sale of donated beer *per se*. However, a license is required to sell alcohol in Pennsylvania. “Sale” is defined as any transfer for a consideration [47 P.S. § 1-102] and would include the offering of beer to persons purchasing tickets as you describe.

It is not clear from your inquiry whether the tickets for the event will be sold by the non-profit entity or by Ski Roundtop. However, your inquiry states that the beer will be served “on [the] property, **but not on the licensed portion of the venue.**” [Emphasis added.] A restaurant license such as the one held by Ski Roundtop entitles the holder to serve alcohol, including malt or brewed beverages, only on the licensed

portion of the premises. [47 P.S. § 4-406.] Therefore, Ski Roundtop would not be permitted to serve beer on an unlicensed portion of the venue or premises to persons who have purchased tickets for the event you describe. In addition, Ski Roundtop is prohibited from accepting anything of value from a licensee of a different class. [40 Pa. Code § 13.51]. Therefore, Ski Roundtop may not accept donated beer from a licensee of a different class.

The holder of a restaurant license is permitted to sell up to one hundred ninety-two (192) ounces of malt or brewed beverages to a single individual in a single sale occurring on the licensed premises, for consumption off the licensed premises. [47 P.S. § 4-407(a)]. Sales of liquor and wine for consumption off the licensed premises are prohibited, except for a specific exception involving wine not applicable here. [47 P.S. § 4-406(e)].

Ski Roundtop may seek a temporary extension of its licensed premises which would allow it to serve alcohol on the extended portion [40 Pa. Code § 7.25]. Information about the process is available on the Board's website.

Should Ski Roundtop wish to sell and serve alcoholic beverages at a location other than the licensed premises, it may wish to apply for and obtain an "off-premises catering permit," which allows the permittee to hold a "catered function" off its licensed premises and on otherwise unlicensed premises. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; no sales for take-out are permitted. [47 P.S. § 4-406(f)].

A "catered function" is defined as "the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance." [47 P.S. § 1-102].

As noted in section 406(f) of the Liquor Code:

(f) The holder of a hotel or restaurant liquor license may obtain an off-premises catering permit subject to section 493(33) to hold a catered function off the licensed premises and on otherwise unlicensed premises where the licensee may sell wine, liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture together

with food, for consumption on those premises. Functions conducted under the authority of the permit shall be subject to the following:

(1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;

(2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;

(3) each catered function shall last no longer than one day and not more than fifty catered functions may be held each calendar year by each license holder for use with a particular license;

(4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;

(5) a permit shall not be issued to an applicant whose license is in safekeeping;

(6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);

(8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;

(9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the local police and the enforcement bureau at least seven days in advance of the event;

written notice shall be provided to the board at least thirty days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its

discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least fourteen days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(10) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements of this act or has previously conducted a function that did not meet the requirements of this act;

(11) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the premises during the function or any activities related to the function;

(12) no catered function may be held for more than five hours per day and must end by midnight;

(13) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), for an event

which has the sole purpose of raising funds for that nonprofit organization; or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(14) the catered function location shall be subject to section 493(34) of this act;

(15) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(16) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(17) a permit shall not be issued to a licensee for use in any location that is mobile; and

(18) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

[47 P.S. § 4-406(f)(footnotes omitted)].

Applications for off-premises catering permits must be filed with the Board by March 1, each year.

Should the non-profit entity wish to sell and serve alcoholic beverages as part of the event you describe, it may wish to apply for a Special Occasion Permit (“SOP”). The Board may issue SOPs to eligible entities. [47 P.S. § 4-408.4]. These entities are listed in detail in the Liquor Code, but generally fall into categories such as certain non-profit (501(c)(3)) entities, fire and ambulance companies, nationally-chartered veterans’ groups, and the like. A list of eligible entities is set forth in section 102 of the Liquor Code. [47 P.S. § 1-102]

Entities that qualify may obtain an SOP that would authorize them to sell liquor and/or malt or brewed beverages to persons twenty-one (21) years of age or older who are not visibly intoxicated. [47 P.S. §§ 4-408.4, 4-493(1)]. SOPs are generally issued for a period of not more than six (6) consecutive or non-consecutive days during a

calendar year. [47 P.S. § 4-408(i)]. The SOP is to be used as a means of raising funds for the holder, but can be used in conjunction with activities or events involving other entities. [47 P.S. § 4-408.4(m)]. The holder of an SOP may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)].

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,
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LCB Advisory Opinion No. 14-357