

August 5, 2014

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John Howe

RE: Access to Licensed Premises

Dear Mr. Howe:

ISSUE: This is in response to your e-mail of July 24, 2014, in which you stated that recent renovations to the restaurant section of your licensed premises have resulted in there being no front locking door. Prior to the renovations, you were able to lock various entrances, thereby restricting access after service hours. You note that you do lock beer and liquor up in separate compartments, but within view of your guests. You ask whether you need to have a locking device preventing guests from entering the restaurant area during the hours that the restaurant is not open.

Pennsylvania Liquor Control Board ("Board") records indicate that Plains Hotel Associates, trading as East Mountain Inn, hold Hotel Liquor License No. H-5505 (LID 7790) for the premises located at 2400 East End Boulevard, Wilkes Barre, Pennsylvania. An extended hours food permit and a Sunday sales permit are also held by this licensee.

OPINION: You are required to prevent access to the restaurant area when it is not open; however, there is no provision in the Liquor Code or Board's Regulations that specifically requires locks. When the restaurant is closed, if patrons are on the restaurant premises, you may be subject to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, just as you may be liable for any other unlawful activity that occurs on the licensed premises. Having a lock may be a good business decision, as it would help you to secure the premises during off-hours.

By way of background, 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)]. It is permissible to 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)].

Please also note that section 499(a) of the Liquor Code provides that all patrons must vacate the licensed premises no later than one-half (1/2) hour after legal alcoholic beverage service time expires. [47 P.S. § 4-499(a)]. This vacating of the premises applies to licensed areas only.

It must be noted that there is an exception to the requirement that patrons vacate a licensed premises. That exception is set forth in section 499(b) of the Liquor Code, specifying that a liquor licensee may remain open between the hours of 2:00 a.m. and 7:00 a.m. for the purpose of serving food and non-alcoholic beverages on any day, if such licensee either possesses or is eligible to purchase a Sunday sales permit and receives an extended hours food permit. [47 P.S. § 4-499(b)].

Such permits do not extend the hours of sale for alcoholic beverages, nor do they allow the sale of beer-to-go after 2:00 a.m. Your establishment has a current extended hours permit and a Sunday sales permit; however, this does not mean that guests may be on the licensed premises during the extended hours if the restaurant is not serving food and non-alcoholic beverages during those extended hours. That is, when the restaurant is closed, access to it must be blocked.

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
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