

September 4, 2014

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Jan Prosseda

**RE: Liquor Law**

Dear Sir/Madam:

ISSUE: This is in response to your e-mail received in this office on July 24, 2014. You ask several questions regarding a charity event held by your organization that includes service of beer. Your inquiry largely concerns the use of a Special Occasion Permit (“SOP”) for your event, for which you intend to apply. Your questions will be answered below, in question/answer format, in the same order as they appeared in your e-mail.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Backyard Benefits, Inc., located at 2825 North 2<sup>nd</sup> Street, Harrisburg, PA (LID 44608), previously held an SOP for an event held on July 9, 2011 in Harrisburg, Pennsylvania.

OPINION: Generally, as you seem to be aware, “eligible entities”, as that term is defined in section 102 of the Liquor Code [47 P.S. § 1-102] 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 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)].

Several of your questions propose that the event will be held without an SOP. Please be advised that an unlicensed establishment (or entity) is permitted to give away free alcohol and the Liquor Code does not limit the amount or type of alcohol that an unlicensed establishment may give away. However, there cannot be any payment or purchase required or associated with the offer of free alcohol at unlicensed premises. Put differently, the alcohol must truly be free and cannot be conditioned upon the purchase of a meal, an admission ticket, donation or payment

of any other fee, i.e., anyone, not just a guest providing a monetary donation, could ask for and receive the beer. Otherwise, the unlicensed establishment/entity could be charged with selling alcohol without a license in violation of section 491(1) of the Liquor Code. [47 P.S. § 4-491(1)].

*The Backyard Benefits' LID is 44608. How soon could we apply for a Special Occasion Permit for an event that will be held on July 18, 2015?*

The completed application form and fee must be filed at least thirty (30) days in advance of the event. SOP application forms are available from the Board's Bureau of Licensing ("Licensing") at 717-783-8250, or via the Board's website, [www.lcb.state.pa.us](http://www.lcb.state.pa.us). To download the application, select "Licensees," then "Applications/Forms," then "Forms," and finally PLCB-1229.

*Would there be a problem with asking for \$1 for a quality cup with or without a SOP when there are thousands of free cups at the beer caddy?*

If you obtain an SOP, this would be permissible. However, without an SOP, it is advisable to not impose any monetary conditions on the availability or quantity of beer being served, as this could be construed as the unlicensed, and thus unlawful, sale of alcohol (as discussed more fully above). That being said, so long as beer may be obtained without the purchase of a "quality cup," charging for said cup is permissible.

*If beer is advertised as being free, would that be considered the same as selling beer with or without a SOP? No money would be collected at the event for beer in either case.*

With an SOP, you are free to impose any cost of admission, donation program, or cost-per-drink pricing scheme that you choose, as the Board's discount pricing practices [40 Pa. Code § 13.102] do not apply to the holder of a special occasion permit. Similarly, the restrictions on advertisement of alcoholic beverages [47 P.S. § 4-498] do not apply to holders of an SOP. However, as discussed above, without an SOP, you may not associate any cost with provision of the beer. Thus, anyone who requests it (so long as they are at least twenty-one (21) years of age and not visibly intoxicated), regardless of whether making a donation or not, must have equal access to the beer.

*If a SOP is obtained, would using the words “Requested Donation” affect any of the rules, diminish the liability or decrease the odds of a problem? Could a specific donation amount be requested?*

Again, with an SOP, you are free to impose any cost of admission, donation program, or cost-per-drink pricing scheme that you choose, as the Board’s discount pricing practices [40 Pa. Code § 13.102] do not apply to the holder of an SOP. Even with an SOP, however, you will be strictly liable for violations of section 4-493(1) of the Liquor Code (“Unlawful acts relative to liquor, malt and brewed beverages and licensees”) [47 P.S. § 4-493(1)] regardless of how your event is advertised or titled. In other words, you cannot provide alcohol to minors or visibly intoxicated persons.

*With a “Requested Donation” event, is it legal to ask for a specific amount of money, such as “The Requested Donation is \$35” or must it be something like “Requested Donation?” We are aware that anyone who does not wish to make a donation must be allowed in free.*

Again, with an SOP, you are free to impose any cost of admission, donation program, or cost-per-drink pricing scheme that you choose, as the Board’s discount pricing practices [40 Pa. Code § 13.102] do not apply to the holder of an SOP. If, however, you do not obtain an SOP, you may not make the availability of alcohol contingent upon a monetary payment or donation, as this would be an impermissible “sale” of alcohol.

*With a “Requested Donation” event, is the entire gross income from all sources required to be donated?*

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. However, 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.

*With a “Requested Donation” event that is advertised as offering free beer and food, is the cost of the beer and food to the organization presenting the event required to be donated?*

The Liquor Code does not address the methods by which food for a charity event can be acquired. 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, again, a license or permit is required to sell alcohol in Pennsylvania. As previously noted, “sale” is defined as any transfer for a consideration [47 P.S. § 1-102] and would include the offering of beer to persons contingent upon a monetary donation.

*With a “Requested Donation” event that is advertised as follows: “Free beer. Hamburgers, Hot Dogs and Pizza included,” must the cost of the beer be donated or the beer and the food or neither?*

There is nothing in the Liquor Code or the Board’s Regulations that would prohibit you from accepting donations to be used toward the purchase of beer and food to be sold at the event. The key, again, is whether or not you have an SOP, and whether the “sale” of the beer you receive is permissible.

*Is the following wording legal with or without a SOP: “All you can eat and drink for \$30?” Are there specific rules concerning radio ads advertising the event whether or not they are paid ads or written by BYB?*

As previously stated, with an SOP, you are free to impose any cost of admission, donation program, or cost-per-drink pricing scheme that you choose, as the Board’s discount pricing practices [40 Pa. Code § 13.102] do not apply to SOP holders.

The sale of alcohol is illegal in Pennsylvania unless the entity selling the alcohol has a license or permit from the Board. [47 P. S. § 4-491(1), 4-492(2),(3)]. The Liquor Code defines a “sale” as any transfer of liquor, alcohol or malt or brewed beverages for consideration. [47 P.S. § 1-102]. Therefore, if you do not have an SOP, you could not offer any quantity of beer in exchange for any monetary amount. This would be considered an unlawful sale of alcohol.

*BYB obtains a block party permit from the city of Harrisburg that is signed by the chief of police. When a SOP is obtained, must the city or state police be notified and if so, to whom should the notification be addressed and where should it be mailed concerning the state police (we know the address in the city)?*

Board-approved entities must provide the local police department (or the Pennsylvania State Police if there is no local police department) with written notice of the intended use of the SOP at least forty-eight (48) hours in advance of the event for which the SOP will be utilized. [47 P.S. § 4-408.4(j)]. The written notice must include the date, time and place of the impending sale of alcoholic beverages. [Id.]

*Is there any difference in liability with or without a SOP? In either case; BYB buys a two-day general and liquor liability insurance policy for the event from Event Helper.*

To the extent that your question concerns civil liability outside the Liquor Code, be advised that liability in any particular situation would depend upon the particular facts as presented to a court of competent jurisdiction. You are advised to contact a private attorney well-versed in liquor liability law, as this office cannot provide information on potential civil liability arising from the actions of licensees.

*If BYB has printed information from the LCB at the event that disagrees with what the State Police state if they should visit the event in the future, which department has the higher authority?*

Pursuant to section 211.1 of the Liquor Code, “[u]pon request by a licensee, the board or its counsel shall issue a legal opinion regarding any subject matter relating to this act or any regulation promulgated pursuant to it. This

legal opinion shall be binding on the enforcement bureau.” [47 P.S. § 2-211.1]. Please be advised, however, that the Pennsylvania State Police Bureau of Liquor Control Enforcement can still issue a citation in good faith alleging violations of the Liquor Code. The case would then be presented to an Administrative Law Judge (“ALJ”) to determine whether a violation occurred.

Finally you ask for a review of your enclosed advertising materials. As the holder of an SOP, you would be subject to the operational limitations previously discussed herein (concerning minors, visibly intoxicated persons, hours of operation, etc.); however, the advertising restrictions found in Section 498 [47 P.S. § 4-498] are not enforceable, as they are not specifically included in the provisions of the SOP statute [47 P.S. § 4-408.4].

Please do not hesitate to contact this office if you have any additional questions.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
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LCB Advisory Opinion No. 14-500