

September 16, 2014

Telephone: (717) 783-9454

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Danielle Barnett

RE: Jello Shots To Go and Beer Sales

Dear Ms. Barnett:

ISSUE: This office is in receipt of your e-mail dated August 9, 2014 in which you state that you are a manager of a recently purchased bar. You inquire as to the legality of selling jello shots to go in closed containers and of the required time of taking out beer to go when purchased at last call, either at 2:00 a.m. or at 2:30 a.m.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that Heitzenraters Hideout LLC, Inc. holds Restaurant Liquor License No. R-14956 (LID 69144) for premises located at 18462 Bennetts Valley Highway, Weedville, Pennsylvania. You are designated as the manager.

OPINION: Section 406(a)(1) of the Liquor Code provides that hotel and restaurant liquor licensees may sell liquor by the glass, open bottle or other container for consumption only in that part of the hotel or restaurant habitually used for the service of food to guests or patrons. [47 P.S. § 4-406(a)(1)]. Accordingly, the sale of jello shots, assuming that they are made with liquor, to go is not permissible. It would be permissible, however, for a licensee to prepare jello shots on the licensed premises for consumption on the licensed premises only.

With regard to your second inquiry as to when beer to go purchased at last call must be taken from the bar, six (6)-packs/or up to one hundred ninety-two (192) fluid ounces in a single sale would have to be removed by 2:30 a.m., the time by which all patrons must vacate the licensed premises. As you are aware, 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)]. You are prohibited from selling beer for off-premises consumption after 2:00 am. However, this provision does not require that the beer sold for off-premises consumption must be removed from the licensed premises by 2:00 a.m. Section 499(a.1) of the Liquor Code provides that:

- (a.1) Subsection (a) shall not apply to sales of malt and brewed beverages for consumption off the premises when the following conditions are met:

- (1) no licensee may sell malt or brewed beverages in excess of one hundred ninety-two fluid ounces in any one sale for consumption off the premises;
- (2) sales and service of malt and brewed beverages for consumption off the premises are made prior to the designated time the licensee is required by this act to cease serving liquor, malt or brewed beverages;

Accordingly, patrons who order beer-to-go before 2:00 a.m. can lawfully take the remaining, unopened beer-to-go with them when they leave the licensed premises before 2:30 a.m. Provided that all patrons have vacated the licensed premises no later than 2:30 a.m., and that no sales of alcohol occur later than 2:00 a.m., there is nothing in the Liquor Code or the Board's Regulations that would prohibit patrons from having, keeping, or possessing previously purchased beer-to-go on the licensed premises between 2:00 a.m. and 2:30 a.m.

Should you have any additional questions, please do not hesitate to 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 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. 14-508