

October 17, 2014

Robert Drey

**RE: Charitable Benefits on Unlicensed Portion of Premises**

Dear Mr. Drey:

ISSUE: This is in response to your e-mail sent on September 1, 2014, wherein you ask if, as a hotel liquor licensee, you would be permitted to allow various groups and organizations to utilize a pavilion and horseshoe pit that is located on your property, but is not part of your licensed premises, for benefits that would include raffles. You indicate that the pavilion and horseshoe pit are free for use, and the organizations and charities using those facilities would keep all monies raised. By telephone, you clarified that it is not your intention to extend your licensed premises to include the horseshoe pit and pavilion.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Robert R. Drey, of Fannettsburg, Pennsylvania, holds Hotel Liquor License No. H-4481 (LID 50605) for the premises located at 10738 Pathvalley Road, Fannettsburg, Pennsylvania.

OPINION: Generally, no unlawful gambling may be directly or indirectly associated with any event, tournament, contest or activity on the licensed premises. If there is unlawful gambling, the licensee will be held strictly liable for such activity and could be cited for violation of the Liquor Code and the Board’s Regulations. [40 Pa. Code § 5.32(e)(2)]. Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether a specific type of raffle would constitute unlawful gambling. However, it should be noted that unlawful gambling consists of the following elements: (1) consideration or a fee or charge to play, (2) an element of chance, and (3) a prize or reward. Pennsylvania Liquor Control Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986). While a raffle would certainly seem to have the three (3) elements necessary to establish gambling, some gambling activities, although unlawful generally, are considered to be lawful if conducted by an entity that holds a small games of chance permit.

Although you indicated that the areas where the raffles would occur are not going to be licensed portions of your premises, out of an abundance of caution, it may be advisable for you to ensure that no unlawful gambling is occurring on your property and that all organizations holding raffles have obtained a permit and are thus permitted to do so.

You should have the organizations intending to hold such raffles contact their county treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division, at (717) 787-8275, to determine what activities are permissible with such a permit. You may also wish to contact the local police, the Pennsylvania State Police, or the county district attorney for an official opinion concerning whether the proposed contests would constitute unlawful gambling.

As for alcohol in the unlicensed pavilion and horseshoe pit areas, please note that a hotel liquor license authorizes the licensee to sell alcoholic beverages only on the licensed areas of its premises. [47 P.S. § 4-406(a)(1); 40 Pa. Code § 7.21(a)]. However, a hotel licensee may let customers transport any alcohol from the licensed premises to an unlicensed area of the premises as long as they remain on hotel property. [47 P.S. § 4-406(e)].

In addition, be advised that a hotel licensee may sell, for consumption off-premises, no more than one hundred ninety-two (192) fluid ounces of beer in a single sale to one (1) person. [47 P.S. § 4-407]. Therefore, a patron could purchase beer inside of the licensed premises, as long as the purchase complies with section 407, and thereafter take the beer outdoors to your pavilion and horseshoe pit areas to be consumed, provided there are no local ordinances prohibiting such activity. It is suggested that you consult your local municipality in order to determine whether an open container law is in effect which would prohibit a patron from consuming beer outdoors.

Finally, please be advised that licensees are strictly liable for violations of the Liquor Code and/or Board's Regulations which occur on their property, including furnishing alcohol, or permitting alcohol to be furnished, to minors and visibly intoxicated persons. Therefore, care should be taken to ensure that any alcohol consumption occurring in your pavilion and/or horseshoe pit areas is done so in compliance with the Liquor Code and/or Board's Regulations.

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

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

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