

October 23, 2014

Angela M. Ward, Esq.  
Going & Plank  
140 E. King Street  
Lancaster, PA 17602

**RE: Catering Club Questions**

Dear Ms. Ward:

ISSUE: This correspondence is in response to your e-mail dated September 25, 2014, wherein you indicate that, after reading Advisory Opinion No. 14-418, your client, the American Legion Home Association of Elizabethtown (“Home Association”), has an additional inquiry. You explain that there are four (4) entities associated with the American Legion in Elizabethtown—the Home Association, which holds the liquor license, the American Legion Post (“Post”), the Sons of the Legion, and the Auxiliary. You further explain that the Post holds two (2) functions a year at the licensed premises called “ham and turkey smokies” for which it sells tickets, and for which it would like to include a draft beer. You also explain that the Post uses the proceeds from the functions to make various donations, and none of the proceeds go to the Home Association. Accordingly, you ask whether these functions would qualify as catered events even though the Post is associated with the Home Association that holds the liquor license for the premises. Alternatively, you ask whether there is any other way that the Post could provide discounted or free beer with food at these events.

The Pennsylvania Liquor Control Board’s (“Board”) records indicate that the Home Association holds Catering Club Liquor License No. CC-5409 (LID 3925) for use at the premises located at 240 North Hanover Street, Elizabethtown, Pennsylvania.

OPINION: For your general information, the Liquor Code prohibits a club licensee from selling alcohol to individuals who are non-members of the club, or who are not active members of another club that is chartered by the same state or national organization. [47 P.S. § 4-406(a)(1)]. Any club licensee that is either an incorporated unit of a national veteran’s organization or an affiliated organization, as defined in section 461.1 of the Liquor Code [47 P.S. § 4-461.1], is permitted to sell liquor or malt or brewed beverages to any active member of another club that is chartered by

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the same national veteran's organization, or to any member of a nationally-chartered auxiliary associated with the same national veteran's organization.

Section 461.1 of the Liquor Code [47 P.S. § 4-461.1] defines an "affiliated organization" as a home association, home corporation, auxiliary, "sons of" or similar organization that is directly affiliated with an incorporated unit or a national veteran's organization. This prohibition on selling alcohol to non-members does not, however, preclude a club member from purchasing alcoholic beverages for non-member guests; nor does it preclude the non-member from being served alcohol purchased by a club member.

Moreover, patrons of a catering club licensee are permitted to purchase alcoholic beverages from the club even if they are non-members, as long as they are a part of a "catered event." As you appear to be aware, "catered events" are those involving the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises, or brought onto the premises already prepared, for the accommodation of groups of people who are using the facilities by prior arrangement at least twenty-four (24) hours in advance of the time of the function and which are paid for by the third party. [40 Pa. Code § 5.83(a)]. Records must be kept showing the date and time catering arrangements were made, the name of the person or the organization making the arrangements, and the approximate number of persons to be accommodated. [40 Pa. Code § 5.83(b)]. A catered event must be conducted for a third party, and cannot be self-sponsored by the licensee.

To answer your question, the Post would be considered a third party and, thus, would be eligible to sponsor catered events at the licensed premises. Please keep in mind, however, that in order for the events to properly qualify as catered events, the Post would need to pay the Home Association for the events. Nevertheless, the Home Association would ultimately have the option of donating any applicable fees back to the Post after it receives payment of the same.

Additionally, please be advised that there is generally nothing in the Liquor Code or the Board's Regulations that would prohibit the Post from selling tickets to the catered events in advance of the events or at the door on the days of the events.

However, club licensees, including catering club licensees, are required to adhere to the provisions of their constitutions and bylaws. [40 Pa. Code § 5.81]. Therefore, if there are any provisions in the Home Association's constitution or bylaws that govern catered events at the licensed premises, including the donation of any fees collected

by the Home Association or the selling of tickets by the sponsors of the events, then such provisions would need to be followed.

As an alternative, the Post may want to explore the possibility of conducting the events pursuant to a Special Occasion Permit (“SOP”). Certain “eligible entities,” as defined in section 102 of the Liquor Code [47 P.S. § 1-102], may apply for and obtain a special occasion permit (“SOP”), which authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises on any day for which the SOP is issued. [47 P.S. § 4-408.4(k)]. A determination as to whether a particular organization qualifies for an SOP is made by the Board’s Bureau of Licensing upon receipt of an application for an SOP. In order to view a list of the entities which are eligible to obtain an SOP, please visit the Board’s website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us), and select “PA Liquor Code” under the heading “Legal.” Then, under “Title 47 P.S. Liquor,” select “Chapter 1. Liquor Code,” followed by “Article I. Preliminary Provisions.” From that point, select “§ 1-102 Definitions,” and then scroll down until you find the term “Eligible Entity.”

SOPs are generally issued for a period of not more than six (6) consecutive or nonconsecutive days during a calendar year. [47 P.S. § 4-408.4(i)]. The holder of an SOP may sell alcoholic beverages for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)]. The holder of an SOP is also required to give the local police department, or the Pennsylvania State Police if there is no local police department, written notice at least forty-eight (48) hours prior to each use of the special occasion permit. [47 P.S. § 4-408.4(j)]. Written notice consists of notifying the police of the date, time and place of the impending sale of alcoholic beverages. [Id.].

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.].

An SOP generally cannot be obtained for premises already licensed by the Board because the Board will not dual license a location absent specific statutory authority; however, if the premises which is currently licensed is de-licensed for the day or days of the event, an SOP could be used at such premises.

The application for an SOP is available online on the Board’s website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us), under the heading “Licensees,” by selecting “Applications/Forms Overview” followed by “Forms.” The application for an SOP is

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titled "PLCB-1229 Application for Special Occasion Permit." Please note that it ordinarily takes a minimum of thirty (30) days to process an initial application for an SOP. For additional information, the Post may contact the Board's Bureau of Licensing at (717)-783-8250.

Finally, please be advised that entities operating under an SOP are generally not subject to discount pricing practice restrictions found in section 13.102 of the Board's Regulations [40 Pa. Code § 13.102].

Should you have any further questions regarding this matter, the Liquor Code, or the Board's Regulations, please do not hesitate to again 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

LCB Advisory Opinion No. 14-561