

December 23, 2014

Diane C. Howland, Manager
Richard L. Hershey Memorial Home Association

RE: Questions Regarding Bartender Authority

Dear Ms. Howland:

ISSUE: This office is in receipt of your e-mail dated November 20, 2014, in which you ask for clarification regarding the authority of a bartender vis-à-vis service of alcohol to patrons who may appear visibly intoxicated. You indicate that you keep hearing the statement that “the bartender is in charge” and you would like to know the extent of this alleged authority. You ask a series of questions in an effort to better understand the scope of a bartender’s authority: (1) If the Club Manager is on premises, does the bartender still have the final authority? (2) If a Club Board Member is on premises, does the bartender still have the final authority? (3) Can the Club Manager cut off service if the bartender does not? (4) Can a Board Member cut off service if the bartender does not?

Pennsylvania Liquor Control Board (“Board”) records indicate that Richard L Hershey Memorial Home Association currently holds Catering Club Liquor License No. CC-6263 (LID 51605) for use by it at 1571 South Main Street, Chambersburg, Pennsylvania.

OPINION: The answer to each of your separate questions is generally the same: club liquor licensees must adhere to the provisions of their constitution and by-laws. [40 Pa. Code § 5.81]. Accordingly, to the extent a club’s constitution or by-laws define the authority of the various officers and how that authority relates to the authority of the bartender on duty, that definition must be observed.

Please be advised, however, that licensees may not serve persons who are visibly intoxicated. [47 P.S. § 4-493(1)]. A licensee’s failure to comply with this provision of the Liquor Code makes it subject to a citation for such violation, as well as to the possibility that its application to renew its license may be rejected by the Board. Compelling the bartender to serve a minor or patron who is visibly intoxicated could subject both the licensee and the bartender to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

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. 14-631