

December 23, 2014

Jeffrey M Schaeffer

E-MAIL: yp.hershey@yourplace.biz

RE: Persons Bringing in outside Alcohol

Dear Mr. Schaeffer:

ISSUE: This office is in receipt of your email of November 18, 2014, in which you state that you have questions regarding your patrons bringing in alcohol obtained from another licensed establishment.

Pennsylvania Liquor Control Board (“Board”) records indicate that Jeffrey M. Schaeffer is the Board Approved Manager of Dommel’s Real & Development Corporation t/a Your Place which is the holder of Restaurant Liquor License No. R-15049 (LID 40923) for use by it at premises located at 1077 West Governor Road, Hershey, Pennsylvania.

OPINION: You pose three (3) questions which will be answered below as follows:

- 1) Is it permissible for you to permit consumption on your premises of alcohol purchased from a nearby Board licensee and brought into your establishment by a patron?

Yes. There is nothing in the Liquor Code or the Board’s Regulations that prohibits an individual from bringing his or her own beer, wine or liquor (commonly called “BYOB”) into any establishment, whether or not the establishment possesses a license issued by the Board. An establishment is, therefore, free to allow or disallow patrons from bringing their own alcohol onto its premises. The alcohol dispensed, however, must be legally procured in the Commonwealth of Pennsylvania. Section 491 of the Liquor Code makes it unlawful for any person to possess any wine within Pennsylvania that has not been purchased through a Pennsylvania wine and spirits store or a licensed limited winery. [47 P.S. § 4-491(2)].

Further, the Liquor Code makes it unlawful for any person to possess any spirits within Pennsylvania that have not been purchased through a Pennsylvania wine and spirits store or a licensed limited distillery. [Id.]. As stated above, while it is permissible for a licensee such as yourself to permit BYOB, it is also permissible for you to forbid the practice as well.

2) What liability could you incur from patrons consuming outside alcohol?

Please be advised, that this office cannot give you guidance as to potential civil tort or criminal liability, to the extent you are seeking guidance as to those issues, you should seek proper counsel.

Under the Liquor Code, the licensee remains responsible for the service of alcoholic beverages upon the licensed premises. Section 493(1) of the Liquor Code specifically prohibits any individual from furnishing or giving alcohol to or to permit alcohol to be given to minors or visibly intoxicated persons. [47 P.S. § 4-493(1)]. Thus, if outside alcohol is provided to a minor or visibly intoxicated person, your establishment could be subject to citation under the Liquor Code.

3) Can a patron take his/her alcohol back outside of the establishment for consumption in your parking lot?

Yes. Patrons may take alcohol that was purchased at another location off the licensed premises with them when they leave. It may be a wise practice to ensure that patrons have purchase documentation of the alcohol purchase as no restaurant licensee is permitted to sell wine or spirits for off-premises consumption. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)(4)].

In regards to your parking lot, to the extent that area is licensed, you could be liable for Liquor Code violations as outlined above. Additionally, you may be subject to potential civil and/or criminal liability through local ordinances in your municipality. It is therefore suggested you contact private counsel for advice in that matter.

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

Jeffrey Schaeffer
December 23, 2014
Page 3

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. 14-633