

December 23, 2014

Matt Gouwens

RE: Off-Premise Catering Permit

Dear Mr. Gouwens:

ISSUE: This is in response to your e-mail of November 17, 2014 wherein you ask how a brew pub licensee would obtain an off premise catering permit. You state that another brewery held an off-site Halloween party, but you were told you could not have an off-site party.

Pennsylvania Liquor Control Board (“Board”) records indicate that Hop Yard Brewing Company holds Brewery License No. G-490 (LID 67927), and Brew Pub License No.GP-490 (LID 69948) for the premises located at 5601 Butler Street, Pittsburgh, Pennsylvania.

OPINION: Pursuant to the Liquor Code, holders of restaurant licenses, hotel licenses, eating place retail dispenser licenses, breweries holding a brewery pub license, and performing arts facilities licenses may apply for and obtain an “off-premises catering permit,” which allows the permittee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; no sales for take-out are permitted. [47 P.S. § 4-406(f); 442(f); 446(b)].

A “catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.” [47 P.S. §1-102]. As noted in section 446(6) of the Liquor Code:

(f) The holder of a brew pub license may obtain an off-premises catering permit subject to section 493(33) to hold a catered

function off the licensed premises and on otherwise unlicensed premises where the licensee may sell wine, liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture together with food, for consumption on those premises. Functions conducted under the authority of the permit shall be subject to the following:

- (1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;
- (2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;
- (3) each catered function shall last no longer than one day and not more than fifty catered functions may be held each calendar year by each license holder for use with a particular license;
- (4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;
- (5) a permit shall not be issued to an applicant whose license is in safekeeping;
- (6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);
- (7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);

(8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;

(9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the local police and the enforcement bureau at least seven days in advance of the event;

(10) written notice shall be provided to the board at least thirty days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least fourteen days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(11) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements

of this act or has previously conducted a function that did not meet the requirements of this act;

(12) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the premises during the function or any activities related to the function;

(13) no catered function may be held for more than five hours per day and must end by midnight;

(14) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3), for an event which has the sole purpose of raising funds for that nonprofit organization;
or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(15) the catered function location shall be subject to section 493(34) of this act;

(16) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(17) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(18) a permit shall not be issued to a licensee for use in any location that is mobile; and

(19) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

[47 P.S. § 4-446(b)(footnotes omitted)].

Please be advised, that as you have not sought an off-premise catering permit prior to the 2014, deadline, you would not be able to hold events in 2014. This deadline is statutorily imposed. [47 P.S. § 493(33)]. There is nothing in the Liquor Code or the Board's Regulations that would permit the Board to extend that deadline. However, you may apply during the application window that will run from January 1 through March 1, 2015. There is a licensing fee of five hundred dollars (\$500.00).

You may apply for an off-premises catering permit by visiting our website at www.lcb.state.pa.us and under the licensing tab, click on forms and look for and complete PLCB form 2403. For additional information or questions you may have completing the form, you can contact the Board's Bureau of Licensing Information Center at 717-783-8250.

Should you have any further questions or concerns, 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
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. 14-634