

January 12, 2015

Brian

E: Catering Club Opening to the Public

Dear Brian:

ISSUE: This correspondence is in response to your e-mail dated December 30, 2014, wherein you ask a series of questions relating to the lawful operation of an unidentified catering club. First, you ask if your club is limited to holding events open to the public only if it is “a rental” or if no alcohol is served. Second, you ask whether your club may sell 50/50 raffles to members and non-members at a “rental event,” if the club holds a small games of chance license. Third, you ask whether guests of members may gamble or if only members are permitted to participate with punch boards and strip tickets. Finally, you ask whether your club may charge a non-member an entrance fee, which would be considered temporary membership for the evening.

OPINION: As a threshold matter, since your questions are basic to the operation of a catering club license, you may wish to review the Information Booklet for Retail Club Licensees, which document can be found on the Pennsylvania Liquor Control Board’s (“Board”) website at www.lcb.state.pa.us, then select “Licensees,” then “Licensing Information,” then “Pamphlets and Books,” and then “PLCB-119 Information Booklet for Retail Club Licensees.”

In response to your first question, an event at your club that is open to the public must either not include the sale of alcohol to non-members or must comply with requirements for a “catered event.” There is nothing in the Pennsylvania Liquor Code or the Board’s Regulations that prohibits a club or catering club licensee from being open to the public (i.e., to non-members) for the sale of food and non-alcoholic beverages anywhere on its licensed premises. However, it should be noted that the Board’s Regulations require that the operations of a licensed club must conform to the club’s constitution and bylaws at all times. [40 Pa. Code § 5.81]. Thus, if your club’s constitution or bylaws contain any provisions prohibiting the club from being open to the public for the sale of food and non-alcoholic beverages, your club would be required to adhere to such provisions.

By way of background, the Liquor Code generally 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)]. It is not known whether your club is a veterans' organization; however, note that any club licensee that is either an incorporated unit of a national veterans' 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 the same national veterans' organization, or to any member of a nationally-chartered auxiliary associated with the same national veterans' organization. [47 P.S. § 4-406(a)(1)].

Section 461.1 of the Liquor Code defines an "incorporated unit of a national veterans' organization" as "any incorporated post, branch, camp, detachment, lodge or other subordinate unit of a national veterans' organization having one hundred or more paid up members and organized for a period of a least one year prior to filing the application for a license." [47 P.S. § 4-461.1]. "Affiliated organization" is defined as "home associations, home corporations, auxiliaries, 'sons of' or similar organizations which are directly affiliated with an incorporated unit or a national veterans' organization." [Id.].

The general 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. This does not mean, however, that a club may simply permit members of the general public to frequent the club and have alcoholic beverages purchased for them by strangers who happen to be club members.

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." It is presumed that this is what you mean by a "rental event."

The Board's Regulations define "catered events" as 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.

In response to your second and third questions, this office cannot advise you on the legality of any specific gambling issues. By way of background, section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] permits retail licensees such as clubs, to hold self-sponsored events (but not "catered events"), tournaments, or contests on their licensed premises. Self-sponsored means paid for and carried out by the licensee.

Events, tournaments, and contests that are sponsored by the licensee are subject to the following rules, which provide, in pertinent part, that there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest. In addition, the value of all prizes awarded may not exceed one thousand dollars (\$1,000.00). The maximum weekly prize limit in a seven (7)-day period is twenty-five thousand dollars (\$25,000.00). [40 Pa. Code § 5.32(f)(7)]. Please note that these limits are not only applicable to cash prizes, but include the fair market value of any non-cash prizes. There are exceptions to prize limitations for entities operating under the Small Games of Chance Act. [10 P.S. §§ 311-327].

In conducting self-sponsored events, licensees shall maintain on the licensed premises for two (2) years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient. [40 Pa. Code § 5.32(e)(9)]. Furthermore, the Board's Regulations require a club licensee to adhere to the provisions of its constitution and/or bylaws. [40 Pa. Code § 5.81].

One (1) of the conditions mentioned above is that 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 raffles, punch boards and strip tickets 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).

Some gambling activities, while unlawful generally, are considered to be lawful if conducted by an entity that holds a small games of chance permit. The Board does not regulate either the Local Option Small Games Of Chance Act [10 P.S. §§ 311-327] or the Bingo Law [10 P.S. §§ 301-308.1], and as such, the interpretation of those laws fall outside of the Board's authority. Accordingly, the Board is unable to address your question concerning raffles, punch boards and strip tickets.

Therefore, it is recommended that you contact your County Treasurer's Office and/or the Department of Revenue, Miscellaneous Tax Division, at (717) 787-8275 with any questions about small games of chance. In addition, please note that the Pennsylvania Department of Revenue publishes a "Small Games of Chance Overview" that may be helpful to you. This overview can be obtained through the Department of Revenue's website, located at www.revenue.state.pa.us.

You may also want to contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion regarding your proposed games and events.

In response to your fourth question, a club may not charge a non-member an entrance fee and consider that to be a temporary membership, as described. Neither the Liquor Code nor the Board's Regulations specifically provide for "temporary" club memberships. The requirements for membership in a club are governed by the club's constitution and/or bylaws, to which each club must adhere. [40 Pa. Code § 5.81].

There is no limitation in the Liquor Code or the Board's Regulations relative to the number or classes of membership maintained by the club. However, section 102 of the Liquor Code [47 P.S. § 1-102] requires that members be admitted only after submission of an application, investigation of the application and a vote on the application. The club must also charge and collect dues from its membership. [Id.].

Temporary memberships would be permissible as long as the club followed the requirements of section 102 for the admission of members and complied with its constitution and by-laws. However, temporary members could not purchase alcohol until after the application has been submitted, investigated and voted on by the membership, a process that this office has previously opined cannot be done in one (1) day.

Brian
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If you have any further questions or concerns 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
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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