

January 21, 2015

Stanley J. Wolowski, Esquire
Flaherty & O'Hara
610 Smithfield Street, Suite 300
Pittsburgh, PA 15222

RE: Restaurant Licensee holding Sacramental Wine License

Dear Attorney Wolowski:

ISSUE: This office is in receipt of your correspondence dated December 31, 2014, wherein you indicate that you are writing on behalf Acme Markets, Inc. ("Acme") for a legal opinion regarding sacramental wine licenses. Specifically, you indicate that Acme was recently approached by the leaders of the local Jewish community with a request to stock and sell sacramental wine at its Narberth store location. You note that Acme is aware that a sacramental wine license would be required to sell the wine. You further note that while Acme holds several restaurant licenses for stores in the region, it does not hold a license for the Narberth store.

Pennsylvania Liquor Control Board ("Board") records indicate that Acme holds several restaurant liquor licenses for use by it at various locations within Pennsylvania. Master File MF-216 (LID 69397) may be referenced for more details regarding these licenses.

OPINION: You pose a series of questions regarding this matter, which will be addressed in the order presented.

- (1) Can Acme acquire a sacramental wine license for premises within its Narberth store even though Acme holds restaurant liquor licenses at other locations?

No. Section 411(b) provides that no sacramental wine licensee, and no officer or director of a sacramental wine licensee shall own any stock or have any financial interest in any hotel or restaurant licensed under the Liquor Code. [47 P.S. § 4-411(b)]. Therefore, Acme could not acquire a sacramental wine license for any store location.

- (2) If Acme is eligible to acquire a sacramental wine license for premises within the Narberth store, can Acme sell wine within the licensed

premises or is Acme limited to delivering the wine to the home address of a family certified by a Rabbi?

This question is moot since Acme, as the holder of a restaurant license, cannot simultaneously hold a sacramental wine license.

- (3) If Acme cannot hold a sacramental wine license because it holds restaurant licenses at other stores, can Acme lease space to a non-related third party who would hold a sacramental wine license for premises within the Acme store?

Yes. While the Liquor Code generally prohibits a restaurant liquor license holder from acting as a landlord to a sacramental wine license holder, section 411(e) of the Liquor Code [47 P.S. § 4-111(e)] states:

That nothing contained in this section shall be construed to prohibit any hotel, restaurant, retail dispenser or club licensee or any officer, director or stockholder, agent or employe of any such licensee from having a financial or other interest, directly or indirectly in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against same, used, leased by an importer or sacramental wine licensee for the exclusive purpose of maintaining commercial offices and on the condition that said property is not used for the storage or sale of liquor or malt or brewed beverages in any quantity. . . .

Therefore, Acme could legally lease space to a sacramental wine licensee, subject to the restriction noted above. This restriction may render the business model impractical because sales may not be conducted in the location leased within the Acme.

- (4) If Acme can acquire a sacramental wine license, would the licensed premises need to have a separate entrance from the outside?

Since Acme cannot acquire a sacramental wine license, this question is moot.

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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. 14-662