

February 9, 2015

Domenick Savino, CPCE
CEO/General Manager
Drexelbrook Catering

RE: Fundraising Event

Dear Mr. Savino:

ISSUE: This correspondence is in response to your e-mail sent January 7, 2015, wherein you indicate that one (1) of Drexelbrook Catering's ("Drexelbrook") clients would like to hold a fundraising event involving the sale of alcohol, and you ask whether Drexelbrook could use an Off-Premises Catering Permit ("OPCP") relative to the event. You explain that the client is a non-profit father's club for a private high school and that the fundraising event will take place in the school's gymnasium with food and a cash bar being made available to attendees. There will also be a silent auction and possibly a live auction and mock gaming tables. No minors will be present during the fundraising event.

You also indicate that the client would like to purchase the alcohol to be utilized at the fundraising event in Pennsylvania and then have your bartenders who are certified under the Responsible Alcohol Management Program ("RAMP") dispense the alcohol during the event. All proceeds of the alcohol sales would be turned over to the client at the end of the event. If it is permissible for Drexelbrook to use an OPCP relative to the event, you ask whether all of Drexelbrook's employees who are on-site at the event would need to be RAMP-certified, or only the employees who are actually dispensing or serving the alcohol.

The Pennsylvania Liquor Control Board's ("Board") Records indicate that L W K Corporation, t/a Drexelbrook, holds Restaurant Liquor License No. R-18896 (LID 19783) for use at the premises located at Drexelbrook Drive & Valley Road, Drexel Hill, Pennsylvania. The Board's records also reflect that Drexelbrook has filed form "PLCB-2403 - Application for Off-Premises Catering Permit" for the 2015 calendar year with the Board's Bureau of Licensing ("Licensing"), along with the requisite fee.

OPINION: If the fundraising event meets the definition of a "catered function," and assuming that the necessary form "PLCB 2403A - Application for Off-Premises Catering Function" is filed and approval from Licensing is obtained, then

it would be permissible for Drexelbrook to utilize an OPCP relative to the same. 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].

Please be advised that OPCPs are subject to the following limitations:

(f) . . . 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. § 4-406(f)].

As indicated above, only individuals who are serving alcohol during a catered function are required to be RAMP-certified. [47 P.S. § 4-406(f)(2)].

Furthermore, please note that an OPCP would only authorize Drexelbrook to engage in the sale of alcohol during the event, and any alcohol sold would need to be lawfully procured in the same manner as any other alcohol that Drexelbrook uses in the regular course of its operations. It would not be permissible for the client to sell alcohol under the authority of an OPCP held by Drexelbrook. Similarly, it would not be permissible for Drexelbrook to sell alcohol that was donated to or otherwise directly obtained by the client. However, there is nothing that would prohibit Drexelbrook from donating the proceeds generated from the sale of alcohol during the fundraising event back to the client following the conclusion of the event.

A possible alternative option would be for the client to conduct the fundraising event pursuant to a Special Occasion Permit (“SOP”). Certain “eligible entities,” as defined in section 102 of the Liquor Code [47 P.S. § 1-102], may apply for and obtain an SOP, which authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises on any day for which the SOP is issued. [47 P.S. § 4-408.4(k)].

SOPs are generally issued for a period of not more than six (6) consecutive or nonconsecutive days during a calendar year. [47 P.S. § 4-408.4(i)]. The holder of an SOP may sell alcoholic beverages for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)]. The holder of an SOP is also required to give the local police department, or the Pennsylvania State Police if there is no local police department, written notice at least forty-eight (48) hours prior to each use of the special occasion permit. [47 P.S. § 4-408.4(j)]. Written notice consists of notifying the

police of the date, time and place of the impending sale of alcoholic beverages. [Id.].

The purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. [47 P.S. § 4-408.4(m)]. An SOP may be used in conjunction with

activities and events involving other entities; however, no one other than the holder of the SOP may acquire a pecuniary interest therein. [Id.].

A determination as to whether a particular organization qualifies for an SOP is made by Licensing upon receipt of an application for an SOP. In order to view a list of the entities which are eligible to obtain an SOP, please visit the Board's website at www.lcb.state.pa.us, and select "PA Liquor Code" under the heading "Legal." Then, under "Title 47 P.S. Liquor," select "Chapter 1. Liquor Code," followed by "Article I. Preliminary Provisions." From that point, select "§ 1-102 Definitions," and then scroll down until you find the term "Eligible Entity."

The application for an SOP is available online on the Board's website at www.lcb.state.pa.us, under the heading "Licensees," by selecting "Applications/Forms Overview" followed by "Forms." The application for an SOP is titled "PLCB-1229 Application for Special Occasion Permit." As you will see, there are instructions included at the end of the application, which also list the entities that are eligible to obtain an SOP. Please note that it ordinarily takes a minimum of thirty (30) days to process an initial application for an SOP. For additional information, Drexelbrook or its client may contact the Board's Bureau of Licensing at (717) 783-8250.

In the event that the client does not qualify for an SOP, it may partner with an entity that does qualify. As noted above, the purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. [47 P.S. § 4-408.4(m)]. This office has interpreted this provision to require that all proceeds from the sale of alcohol pursuant to an SOP must be collected by the holder of the SOP. However, nothing would prohibit the holder of an SOP from subsequently making a voluntarily contribution to, or partnering with, third parties. Therefore, an eligible entity may obtain an SOP, use it to acquire and sell alcohol, retain the proceeds from the sale of alcohol, and subsequently make a voluntary contribution of a portion of the proceeds to third parties.

Please keep in mind that any alcohol sold by an eligible entity under the authority of an SOP would need to be lawfully procured.

If you have any additional questions 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

LCB Advisory Opinion No. 15-037