

March 19, 2015

Chuck Kovach
Director of Food and Beverage
Savor Mohegan Sun Arena @ Casey Plaza
255 Highland Park Blvd.
Wilkes Barre, PA 18702

RE: Public Venue Liquor License

Dear Mr. Kovach:

ISSUE: Your e-mail of January 23, 2015 poses a series of questions regarding your public venue liquor license.

First, you state that you are planning to move your club lounge, which is currently on the bottom floor, to your concourse, directly in back of your club section of seating. In this club lounge you do sell and plan to sell all types of alcohol. The general public will not be allowed into the club sections of seats without a club seat ticket. No alcohol will be allowed to leave the club section, although this lounge is designed so that your club seat holders can get an alcoholic beverage in the club lounge and then return to their club seat with the beverage. There is a railing that acts as a barrier between general seating and the club seating on both sides of the club section. You inquire whether this follows the guidelines of your liquor license.

Second, you state that, in conjunction with moving your club section, you are planning to build an expansion on to your building, which is currently not a licensed area. You inquire whether an application for extension of premises is required, what the process for such an application is, and whether you need to apply before the expansion is built or after the area is built and fully completed.

Third, you state your understanding that your license permits the sale of only malt or brewed beverages, other than in club seats and restaurant facilities, during sporting events, and permits the sale of all types of alcoholic beverages during other entertainment events. You inquire whether there is a way to change your license so you are able to sell all types of alcoholic beverages during sporting events in every location.

Fourth, you state that you are looking at doing some one (1)-day concert event parties in your parking lot. The parking lot is not part of the licensed area but is directly adjacent to the arena. You inquire whether there is a way you can get this to be a licensed area.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that the SMG Food and Beverage, LLC, t/a Savor Mohegan Sun Arena @ Casey Plaza (“Arena”), holds Public Venue Liquor License No. PV-116 (LID 62160) for premises located at 255 Highland Park Blvd., Wilkes-Barre, Pennsylvania. Board records further indicate that the entire concourse level and club box-suite levels of the Arena are currently licensed.

OPINION: In response to your first question, section 412(a) of the Liquor Code [47 P.S. § 4-412(a)] authorizes the Board to issue a restaurant liquor license to public venues, as defined in section 102 of the Liquor Code. [47 P.S. § 1-102]. While public venue licenses are considered to be restaurant liquor licenses, section 412(f) imposes the following additional restrictions:

(1) Sales may only be made one hour before, during and one hour after any athletic performance, performing arts event, trade show, convention, banquet or any other performance at the facility; however, sales may not be made from two o'clock antemeridian to seven o'clock antemeridian. In addition, sales may not occur prior to eleven o'clock antemeridian on Sundays or seven o'clock antemeridian on Mondays.....

(2) Sales of alcoholic beverages before, during and after all professional and amateur athletic events on the premises shall be limited to sales of malt or brewed beverages in shatterproof containers. Sales of alcoholic beverages before, during and after performing arts events or other entertainment events may consist of liquor or malt or brewed beverages in shatterproof containers. Sales during trade shows, conventions, banquets or at other events....

[47 P.S. § 4-412(f)(1),(2)].

Accordingly, your public venue license permits you to serve only beer in shatter-proof containers during any sporting event. Beer, wine and liquor may be sold during non-sporting events.

However, section 412 does provide a mechanism through which beer, wine and liquor can be sold during sporting events. Specifically, section 412 provides that “sales made in the club seats or at a restaurant facility, may consist of liquor or malt or brewed beverages in any type of container; however, any liquor or malt or brewed beverages sold in the club seats or restaurant facility must remain in the club seating level or restaurant facility.” [47 P.S. § 412(f)(2)]. Club seating must be specifically designated and located on its own level and partitioned from general seating by a wall, divider, partial wall or railing. The club seating level cannot be accessible by the general public. [Id.].

Your proposed operations in the planned club lounge, as described in your first inquiry, appear to comport with the above provisions, although the ultimate decision will be made by the Board’s Bureau of Licensing (“Licensing”) once you submit the application referenced below.

As to your second inquiry, a licensee is authorized to sell alcoholic beverages only on the licensed areas of its premises. [47 P.S. § 4-406(a.1); 40 Pa. Code § 7.21(a)]. Since the addition of the proposed expansion is outside of the currently licensed area, you would have to submit an application to extend the licensed premises in order to sell alcohol from that area. [40 Pa. Code § 7.21]. The forms necessary to apply for extension of licensed premises may be acquired from Licensing at (717) 783-8250, or via the Board’s website, at <http://www.lcb.state.pa.us>, by selecting “Licensees,” then “Applications/Forms,” then “Application Packets,” and then “Application Packet for Extension of Retail License to Cover Additional Premises.” An applicant may request “prior approval” of the extended area if physical alterations or new construction will be required. [40 Pa. Code § 7.23]. Before an application is considered by the Board, Licensing will conduct an inspection of the premises to ensure that the additional premises is completely equipped to carry on the licensed business. Please note that Licensing will typically not dual-license a premises or portion of a premises, which may be at issue here due to the presents of other licenses at the Arena.

Please note that once the extension is approved, the subject area becomes subject to restrictions applicable to public venue licenses as set forth in section 412 of the Liquor Code [47 P.S. § 4-412] and the Board’s Regulations.

In response to your third question, as indicated above, section 412 provides a mechanism through which beer, wine and liquor can be sold during sporting events. Specifically, section 412 provides that “sales made in the club seats or at a restaurant facility, may consist of liquor or malt or brewed beverages in any type of container; however, any liquor or malt or brewed beverages sold in the club seats or restaurant

facility must remain in the club seating level or restaurant facility.” [47 P.S. § 412(f)(2)]. Club seating must be specifically designated and located on its own level and partitioned from general seating by a wall, divider, partial wall or railing. The club seating level cannot be accessible by the general public. [Id.]. There is no provision which permits a public venue liquor licensee to sell all types of alcoholic beverages during sporting events in every location of the premises. A restaurant license would authorize the holder to sell all types of alcoholic beverages during a greater range of hours. See generally 47 P.S. § 4-406.

In response to your fourth question, as indicated above, a licensee is authorized to sell alcoholic beverages only on the licensed areas of its premises. An application to extend the premises may be filed to cover areas not licensed, such as the parking lot adjacent to the arena. Please note that it is Licensing and, ultimately, the Board that has authority to grant such application, rather than this office.

Should you have any further questions regarding this matter, please do not hesitate to 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. 15-090