

April 7, 2015

Michelle Grove

RE: Selling Other Items

Dear Ms. Grove

ISSUE: This office is in receipt of your e-mail of March 10, 2015, wherein you raise four (4) questions, which will be answered below.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that 685 Pleasant View Joint Venture holds Restaurant Liquor License No. R-9600 (LID 59804) for use at its premises at 685 Pleasant View Boulevard, Bellefonte, Pennsylvania.

OPINION: Your questions will be answered below:

1) Are you able to sell cigarettes?

The Board has previously granted approval for retail licensees, including restaurant, hotel and club liquor licensees, to sell cigarettes. Accordingly, it would be permissible for you to sell cigarettes. You may wish to contact the Pennsylvania Department of Revenue, Miscellaneous Tax Division, Cigarette Tax Office, at (717) 783-9374 for more information regarding the sale of cigarettes.

2) Are you able to sell lottery tickets?

The Board has traditionally granted retail licensees’ requests to sell Pennsylvania lottery tickets on their licensed premises. Therefore, your request to sell Pennsylvania lottery tickets on your licensed premises is granted, provided that you comply with any rules or regulations imposed by the Pennsylvania Lottery.

3) Can you have vendors operate outside on your property?

Section 3.52(a) of the Board’s Regulations prohibits a licensee from permitting other persons to operate another business on the licensed premises. [40 Pa. Code § 3.52(a)]. Thus, you would not be permitted to have another entity operate on your licensed premises. However, this prohibition relates to the licensed portion of your property. In addition, the licensed premises cannot have an inside passage or communication to or with any other business conducted by the licensee or other persons except as approved by the Board. [40 Pa. Code § 3.52(b)].

4) Can you deliver beer with your food orders?

As you know, a restaurant (“R”) license holder may only sell alcohol on the licensed portion of the premises. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)-(4)]. Sales of beer for off-premises consumption must occur on the licensed premises. [47 P.S. § 4-492(2)]. Moreover, sales for off-premises consumption are limited to one hundred ninety-two (192) ounces in a single sale to one person. [47 P.S. § 4-407(a)].

An R license does not authorize the licensee to deliver alcohol. If the holder of an R license would like to deliver alcohol for off-premises consumption, the R licensee must also acquire a transporter-for-hire license. Section 501 of the Liquor Code requires a license issued by the Board in order to transport-for-hire any alcoholic beverages within the Commonwealth. [47 P.S. § 5-501].

There are three (3) types of transporter-for-hire licenses issued by the Board. The transporter-for-hire Class A license authorizes the holder to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth. A transporter-for-hire Class B license allows the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. A transporter-for-hire Class C license is a fleet license that authorizes the holder to engage in the commercial transportation of liquor parcels within the Commonwealth. [40 Pa. Code § 9.11].

If an R licensee were to also obtain a transporter-for-hire license, customers who place an order for delivery would have to pay for that order by debit or credit card, just as they might while they are on the licensed premises. The sale of the alcohol must be completed on the licensed premises before delivery occurs. It would not be permissible for the customer to pay the delivery person in cash, for that would clearly be a sale occurring off of the licensed premises. Customers may tip the delivery person if they so choose, since tipping is optional and is not the off-premises sale of alcohol. Moreover, a single customer would be limited to the purchase of one hundred ninety-two (192) ounces per transaction. Please note that a customer would be permitted to conduct multiple transactions so long as each sale is separately completed.

A licensed transporter is not permitted to transport malt or brewed beverages in the same vehicle at the same time as “a commodity that is hawked or peddled by the licensee.” [40 Pa. Code § 9.92(b)]. In other words, a transporter-for-hire licensee may not sell or attempt to sell other items, which have not been pre-ordered by a customer, from the same vehicle used to transport malt or brewed beverages. For example, this prohibits a licensed transporter from using its vehicle as a food truck. However, it would be permissible to deliver orders containing food, malt or brewed beverages, or both to different customers in the same trip.

Please further note that the transporter-for-hire licensee may only transport alcohol that it does not own, such as alcohol that a customer has purchased. If you obtain a transporter-for-hire license, you cannot use that licensed vehicle to pick up alcohol that you have purchased from a beer distributor.

Lastly, the application forms for transporter-for-hire licenses are available from the Board's Bureau of Licensing at (717) 783-8250, or via the Internet at www.lcb.state.pa.us; once there, click on "For Licensees," followed by "Applications and Forms," and select "PLCB-1350." If you have questions about completing the form(s), you should contact Licensing directly at the above-listed number.

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
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