

April 27, 2015

Greg Skirboll

RE: Minors

Dear Mr. Skirboll:

ISSUE: This office is in receipt of your e-mail dated April 13, 2015, wherein you indicate that you own a brewpub in York, Pennsylvania. You explain that your sales are eighty percent (80%) food; therefore, you state you are permitted to have minors on your premises. However, you explain that you intend to introduce live music on the licensed premises during the hours of 8:30 p.m. through 11:30 p.m. You further indicate that the kitchen closes at 10:00 p.m. You ask if minors are permitted to remain on the licensed premises after the kitchen closes. Additionally, you ask if minors are permitted to enter the licensed premises after 10:00 p.m.

Pennsylvania Liquor Control Board (“Board”) records indicate that Lucid Foods, LLC, t/a Mexitaly, holds Brewery License No. G-516 (LID 68738) and Brew Pub License No. GP-516 (LID 68739) for use by it at premises located at 2440 East Market Street, York, Pennsylvania.

OPINION: The general rule in Pennsylvania is that minors may not be present in an establishment licensed to sell alcoholic beverages. Pennsylvania law defines a minor as a “person under the age of 21 years.” [1 Pa. C.S.A. § 1991]. There are five (5) exceptions to the general rule:

1. Minors with parents (“Parent exception”)

If a minor is with one (1) or both of the minor’s parents, then the minor is permitted to be on the premises. The minor and parent(s) can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the parent(s) or to any other adult with the minor.

2. Minors with legal guardians (“Guardian exception”)

If a minor is with a legal guardian, then the minor is permitted to be on the premises. The minor and the legal guardian can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to the guardian or to any other adult with the minor.

3. Minors under proper supervision (“Proper supervision exception”)

If a minor is under proper supervision, then the minor is permitted to be on the premises. Section 102 of the Liquor Code defines proper supervision as someone who is at least twenty-five (25) years of age, who is directly responsible for the care and conduct of the minor while on the premises, and who keeps the minor within his or her sight or hearing. Proper supervisors are generally unpaid volunteers. However, licensees or their employees are allowed to act as proper supervisors as long as they are not performing any other employment-related duties at the same time. [47 P.S. § 1-102].

If a minor is on the premises under proper supervision, the minor can sit anywhere on the premises, including the bar area, and alcoholic beverages can be served to any adults with the minor.

Proper supervisors can only supervise a limited number of minors. In Philadelphia, that number is five (5). In the rest of Pennsylvania, the number is twenty (20), i.e., one (1) proper supervisor can supervise up to twenty (20) minors. Notwithstanding the above limitations, if the minors are on the premises as part of a school-endorsed function, each proper supervisor can supervise up to fifty (50) minors.

Regardless of relationship, someone who is eighteen (18) years old may be properly supervised by anyone who is twenty-five (25) or older, as long as that person is directly responsible for the care and conduct of the minor while on the premises, and keeps the minor within his or her sight or hearing.

4. Minors attending a social gathering (“Social gathering exception”)

If a minor is attending a social gathering, then the minor is permitted to be on the premises. A social gathering is an event marketed to or catering to minors, in whole or in part, for which at least forty-eight (48) hours advance notice has been given to the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”). No alcohol can be served to anyone, even adults, at a social gathering

and all alcohol must be removed from or secured by lock and key at the licensed premises.

5. Minors at food-oriented establishments (“Pizza Hut exception”)

If a restaurant, hotel, or retail dispenser licensed premises has gross sales of food and non-alcoholic beverages equal to fifty percent (50%) or more of its combined gross sales of both food and alcoholic beverages, then minors are permitted on the premises. The presence of a parent, legal guardian, or proper supervisor is not necessary.

Minors present under the Pizza Hut exception are not permitted to sit in the bar section of the premises. Further, no alcoholic beverages can be served to any adult at the table or booth where the minor is seated (unless the minor is also there with a parent, legal guardian, or proper supervisor), without risk of citation by the Bureau for having minors frequent the premises. Please note that this exception does not apply to clubs.

Minors are not permitted on licensed premises unless they fall under one (1) of the above-listed exceptions. Be advised that it does not matter if a minor is age six (6), age eighteen (18) or age twenty (20); the same rules apply.

Further, there is nothing in the Liquor Code or Board’s Regulations that modifies the aforementioned exceptions based on whether the licensee’s kitchen is closed or open. However, be advised licensees are required to abide by all appropriate provisions in the Liquor Code and regulations, and will be held strictly liable for any violations thereof. The holder of a brewery pub license is subject to the same conditions and qualifications as those imposed on holders of an eating place retail dispenser (“E”) license, except as set forth in section 3.92. [Id.].

An “eating place” is defined by the Liquor Code as:

a premise where food is regularly and customarily prepared and sold, having a total area of not less than three hundred square feet available to the public in one or more rooms, other than living quarters, and equipped with tables and chairs, including bar seats, accommodating thirty persons at one time. The board shall, by regulation, set forth what constitutes tables and chairs sufficient to accommodate thirty persons at one time.

[47 P.S. § 1-102]. Therefore, regarding the service of food, your brew pub must maintain the ability to feed thirty (30) or more people even if your kitchen is “closed” while you are serving alcohol. [47 P.S. § 1-102]. Pennsylvania courts have offered guidance on the types and amount of food that is sufficient in order to comply with the requirements imposed by the Liquor Code. See Appeal of Albus, 149 A.2d 163 (Pa. Super. 1959) (*the kitchen was ten (10) feet by four (4) feet; there were twelve (12) sandwiches available, which could be served on ten (10) pieces of china*); Pennsylvania Liquor Control Bd. v. Dobrinoff, 471 A.2d 941 (Pa. Cmwlth. 1984) (*the food supply on hand consisted of two (2) pounds of chicken necks, a half-pound of cheese, a gallon of pickles, and three (3) cans, each, of sauerkraut and tomato sauce*); and Mitchell v. Pennsylvania Liquor Control Bd., 476 A. 2d 479 (Pa. Cmwlth. 1984) (*a liquor control enforcement officer visited the licensed premises on four (4) occasions and ordered a sandwich each time, but the licensee was never able to serve the officer a sandwich; the officer never saw a menu or any other patrons eating*).

Additionally, this office has previously advised that preparing and providing hot dogs and an occasional offering of “full dinners” meets the food requirement of section 102. Further, there is nothing in the Liquor Code or Board’s Regulations that prohibits a licensee from offering food that is prepackaged so long as it is prepared at the premises, and nothing requires that food be made from scratch in order for a licensee to meet the requirements of section 102. [LCB Advisory Opinion Nos. 03-083, 07-523, and 09-159].

In sum, since there is no specific requirement or prohibition regarding kitchen hours, you may operate your kitchen according to your business needs, but you must ensure that you are compliant with the definition of “eating place” under the Liquor Code, including the provisions related to serving food as the principal part of your business, and maintaining enough substantive food in accordance with the Courts’ and the Board’s directives at all times that you serve alcohol whether your kitchen is designated as “open” or “closed.” Further, the designation of the kitchen as “open” or “closed” does not affect the ability of minors to be on the licensed premises, provided that one (1) of the aforementioned exceptions is applicable.

Finally, it should also be noted that an establishment is permitted to make house rules that place additional limits as to when and where minors are allowed on the premises. Therefore, you would be permitted to place additional limits on whether minors are permitted to be on your licensed premises when the kitchen is closed.

Should you have any additional questions, 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
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LCB Advisory Opinion No. 15-190