

May 19, 2015

Todd Stevenson

RE: Outdoor Service Area

Dear Mr. Stevenson:

ISSUE: This office is in receipt of your e-mail dated April 29, 2015, wherein you indicate that you would like to know the process, regulations, and rules if you wanted to open an outdoor seating area for the service of food and alcohol. You state that the proposed area would be immediately outside of the building on your property, which is currently a parking lot. You ask if the area must be fenced and whether or not games may be played in that area.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that T & A Stevenson Inc. holds Restaurant Liquor License No. R-10344 (LID 69465) for premises located at 202 Church Street, Sunbury, Pennsylvania.

OPINION: Board records indicate that no outside serving areas are currently licensed at your establishment. Therefore, in order to sell or serve alcohol in an unlicensed outdoor area, it would be necessary to file an application for an extension of premises to license the proposed space.

Please be aware that should you extend your license to cover this additional area, that additional area is subject to the Liquor Code and the Board’s Regulations. Therefore, for the outside service area, the restaurant must prevent minors from frequenting the premises except under specific statutory exceptions. [47 P.S. § 4-493(14)]. Moreover, alcohol cannot be provided or furnished to minors or to visibly intoxicated persons. [47 P.S. § 4-493(1)].

A licensee that wishes to extend its license to cover an outside area must submit an application to extend its licensed premises with the Board. [40 Pa. Code § 7.21]. The forms necessary to apply may be acquired from the Board’s Bureau of Licensing (“Licensing”). Licensing’s telephone number is (717) 783-8250.

In addition, the Board's website allows licensees to download forms necessary to apply to extend their licensed premises. You can obtain these forms from the Board's website at <http://www.lcb.state.pa.us>. Once there, you should click on "Licensees;" then click on "Application/Forms Overview;" then click "Application Packets." The application packet entitled "Application Packet for Extension of Retail License to Cover Additional Premises," is the packet you would need. In addition, sections 7.21 through 7.24 of the Board's Regulations set forth the requirements for extending licensed premises. [40 Pa. Code §§ 7.21-7.24]. Thus, you may want to review these sections. All Commonwealth Regulations, including the Board's Regulations, are available online at <http://www.pacode.com>; all of the Board's Regulations are found in Title 40, entitled "Liquor." After the application packet is received by Licensing, an investigation is performed, which includes a site visit.

It is important to note that, even without an extension of premises, it would still be possible for patrons to purchase up to one hundred ninety-two fluid ounces (192 oz.) of malt or brewed beverages in a single sale from the already licensed premises and thereafter take the malt or brewed beverages off the licensed premises to be consumed, provided there are no local ordinances prohibiting such activity. [47 P.S. § 4-407(a)]. It is advisable that you consult your local municipality in order to determine whether an open container law is in effect which would prohibit patrons from consuming malt or brewed beverages in the patio parking lot area. Patrons would not be permitted to carry wine or spirits from the already licensed premises for off-premises consumption.

Regarding the use of the outdoor space, it should be noted that a licensee may not use, or permit to be used, inside or outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee's property line. [47 P.S. § 4-493(34)].

In addition, depending on what entertainment you will be providing, you may need to obtain an amusement permit. An amusement permit authorizes dancing, theatricals, floor shows and motion picture exhibitions in licensed premises or places operated in connection therewith. [47 P.S. § 4-493(10); 40 Pa. Code § 5.31]. However, television devices, audio/video playback devices, radio, instrumental music, games or events/tournaments/contests do not require an Amusement Permit. Please note that events, tournaments and contests are defined as "a competitive endeavor involving skill, speed, strength or endurance. The term

includes a competitive endeavor involving physical attributes of contestants.” [40 Pa. Code § 5.30]. Moreover, game is defined as “a device, such as a pinball, shuffleboard, bowling or video machine which provides the player with amusement and no other form of award excepting free plays.” The application for an amusement permit can be found on the Board’s website, at www.plcb.state.pa.us by clicking on the link “For Licensees,” then “Applications and Forms.” The pertinent form is PLCB-318.

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

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