

June 11, 2015

Mary Bonte Spath, CPA, MBA
Chief Financial Officer
Kalahari Resorts
P.O. Box 590
Wisconsin Dells, WI 53965
VIA E-MAIL: mbonte@kalahariresorts.com

RE: Operations of a Hotel Liquor License

Dear Ms. Spath:

ISSUE: This is in response to your e-mail of May 22, 2015, wherein you state that your company is constructing a new hotel waterpark resort scheduled to open in June 2015. You plan on having several food and beverage outlets in addition to a twenty-four (24) hour store with sundries to sell to customers. You state that the license has been approved and is in safekeeping. You are currently in the process of filing the application for return of the license and are anticipating receipt of the health license post inspection. You pose four (4) questions, each of which is delineated and answered below.

Pennsylvania Liquor Control Board ("Board") records indicate that Kalahari Resorts, LLC holds pending Hotel Liquor License No. H-6434 (LID 70296) for use at 250 Kalahari Boulevard, Pocono Manor, Pennsylvania.

OPINION:

Question 1: *Does PA allow us to sell off-sale beer in the resort twenty-four (24) hour store that is an approved license area? If so, what are the hours allowed?*

If the twenty-four (24) hour shop is included in the licensed area alcoholic beverages may be sold from it. However, please note that non-food items, such as over the counter medicines, deodorant, shampoo and other traditional gift shop

items, may not be sold from a licensed area unless approved by the Board. Sale of sundries by a licensee upon its licensed premises is prohibited as the conduct of “another business,” unless a licensee requests and receives the Board’s approval to allow the sale of sundries. [40 Pa. Code § 3.52(c)]. If you are unsure what areas are licensed please contact the Bureau of Licensing.

In regard to malt or brewed beverages, section 407 of the Pennsylvania Liquor Code states that hotel liquor licensees may sell malt or brewed beverages for consumption off of the licensed premises in quantities of not more than one hundred ninety-two (192) fluid ounces in a single sale to one (1) person. [47 P.S. § 4-407]. Retail licensees may sell beer-to-go. [47 P.S. §§ 4-407(a), 4-431(c)]. This office cannot advise you as to the open container laws in your specific municipality; it is suggested that you contact the local municipality or local police department to determine if the municipality has any applicable open container ordinances.

As for time of sales, please be advised that licensees are subject to time restrictions as to sales of alcoholic beverages. Hotel licensees may sell liquor and malt or brewed beverages from 7:00 a.m. until 2:00 a.m. of the following day except Sunday; with a Sunday Sales Permit licensees are permitted to sell alcoholic beverages between 11:00 a.m. and 2:00 a.m. Monday morning and between 9:00 a.m. to 2:00 a.m. Monday if a meal is served. [47 P.S. § 4-406(a)(2)].

Further, please be advised that the holder of a hotel liquor license is authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel habitually used for the serving of food to guests or patrons, and to guests in their private rooms in the hotel. [47 P.S. § 4-406(a)(1)]. The hotel license may allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain on the hotel property. [47 P.S. § 4-406(e)]. Therefore, while you may not sell alcohol to patrons in any unlicensed areas, there is nothing that prohibits a patron from purchasing an alcoholic beverage on the licensed premises and transporting it to another area, such as a hospitality room, as long as the alcoholic beverages remain on the hotel property.

Question 2: We will be operating a candy store within the resort. We want to sell gift baskets of candy and a bottle of champagne in the basket. Is this allowable?

In order to sell a gift basket with a bottle of champagne as a component, the shop must be included in the licensed premises. Guests purchasing alcohol may take the purchase to their room. Sales of alcohol for off-premises consumption is prohibited. Additionally, the sale of other items upon its licensed premises may be regarded as the conduct of “another business” and is prohibited unless a licensee requests and receives the Board’s approval to do so. [40 Pa. Code § 3.52(c)]. Such shops, although traditionally considered the operation of another business, have been permitted to be included within the licensed hotel on a case-by-case basis.

Question 3: To confirm, are we allowed to sell wine or liquor to our guests staying at the resort?

The sale of wine or liquor to your hotel guests is permissible, but with limitations, as set forth in the response to Question 1 and reiterated herein. Hotel licensees are authorized to sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the hotel habitually used for the serving of food to guests or patrons, and to guests in their private rooms in the hotel. [47 P.S. § 4-406(a)(1)]. The holder of a hotel license (or the holder of a restaurant license located in a hotel) may allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain on the hotel property. [47 P.S. § 4-406(e)]. A hotel liquor license does permit the sale for consumption off-premises of up to one hundred ninety-two (192) fluid ounces of malt or brewed beverages in a single sale to one (1) person. [47 P.S. § 4-401]. However, the sale of wine for off-premises consumption is generally prohibited. Section 406(e) of the Liquor Code provides a limited exception that:

the holder of a hotel license or a restaurant license may allow persons who have purchased, but only partially consumed, a bottle of wine on the premises to remove the bottle from the premises, so long as the bottle was purchased in conjunction with a meal which was consumed on the premises and so long as the bottle is resealed.

[47 P.S. § 4-406(e)].

A “meal” is defined as “food prepared on the premises, sufficient to constitute breakfast, lunch or dinner; it shall not mean a snack, such as pretzels, popcorn, chips or similar food.” [Id.].

Question 4: *Are we allowed to sell wine or liquor to customers who may take off the premises?*

The sale of liquor for off-premises consumption is prohibited, as is the sale of wine with the limited exception of wine served with a meal specified in section 406 (e) of the Liquor Code and delineated in response to Question 3. [47 P.S. § 4-406(e)].

Should you have any other questions and/or issues related to the Liquor Code or the Board’s Regulations, please feel free to once 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
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. 15-256