

August 20, 2015

Rebecca Weiss

**RE: Adult Entertainment**

Dear Ms. Weiss:

ISSUE: This office is in receipt of your e-mail, dated July 13, 2015, wherein you indicate that you have an adult entertainment bar that abides by “the pasties and G-string rule.” You ask whether your entertainers still need to wear pasties. You explain that you believe that rule was overturned; however, you note that the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) told you that this is a gray area and suggested that you write this office for clarification.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that RB Food, Drink, & Lodging, Inc., t/a Town Terrace Hotel (“Town Terrace”), holds Hotel Liquor License No. H-4201 (LID 44040) for use by it at premises located at 7860 West Ridge Road, P.O. Box 664, Fairview, Pennsylvania. The Board’s records also indicate that you are the Board-approved manager.

OPINION: There is nothing in the Liquor Code or the Board’s Regulations that currently requires exotic dancers to wear pasties or G-strings. Although section 493(10) of the Liquor Code [47 P.S. § 4-493(10)] and section 5.32 of the Board’s Regulations [40 Pa. Code § 5.32] prohibit liquor licensees from permitting any lewd, immoral, or improper entertainment in a licensed premises or in any place operated in connection therewith, those provisions were struck down as unconstitutional by the Third Circuit Court of Appeals, in so far as they prohibited “lewd” entertainment in any establishment holding a liquor license. [Conchatta Inc. v. Miller, 458 F.3d 258 (3rd Cir. 2006)]. As a result of this and an earlier court decision, section 493(10) of the Liquor Code and section 5.32 of the Board’s Regulations are unenforceable to the extent that they prohibit lewd, immoral or improper entertainment.

Be advised, however, that the activities that you described may violate and/or be regulated by the Pennsylvania Crimes Code or local ordinances. Because this office does not provide opinions pertaining to the Crimes Code or local ordinances, you may wish to contact the Pennsylvania State Police, your local police, and/or the District Attorney’s office in your county, for their opinions regarding such activity.

Assuming that such activity does not violate the Crimes Code or local ordinances, and depending on the particular circumstances surrounding the entertainment, you may need

to obtain an amusement permit to allow such activities. 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].

The application for an amusement permit is available on the Board's website, [www.lcb.state.pa.us](http://www.lcb.state.pa.us). In order to access the applications from the main page, place your cursor over the link for "Licensees," followed by "Applications/Forms Overview," and then select "Forms." The application for an amusement permit is titled "PLCB-318 Application for Sunday Sales/Amusement Permit/Extended Hours Food License."

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  
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. 15-354