

August 24, 2015

Gerald E. Weise

RE: Club Picnic and Free Beer as Payment for Services

Dear Mr. Weise:

ISSUE: This office is in receipt of your e-mail, dated July 25, 2015, wherein you state that you are a member of the board of directors for R Field and Stream Association of Lebanon County (“the Club”), which holds a club license. You ask several questions about providing free alcohol to your club’s members.

First, you ask the following questions regarding providing free beer at your annual picnic: (1) may the Club provide free beer to club members and their families at the club’s annual picnic; (2) may the Club pay for the beer with monies from its general fund; and (3) does the Club need to keep the free beer that it will provide at the picnic separate from its normal beer supplies which are for re-sale at the Club. You explain that there is no fee to attend the picnic which is held on the Club’s property located adjacent to the “clubhouse.” You also note that the general fund contains monies from alcohol profits and forty percent (40%) of the Club’s earning from small games of chance and nothing in your bylaws or house rules prohibit the use of these funds. Finally, you indicate that the free beer will only be served to members of legal age and will not be served to intoxicated persons.

Next, you ask if the Club may provide free beer to club members who work at fundraisers such as your chicken barbeque and similar events. You explain that these events are held on the club’s property located adjacent to the “clubhouse.”

Finally, you ask if the Club may provide free beer to club members who help clean-up your club property. You explain that these clean-up details result in hundreds of pounds of trash and many work hours.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that R Field and Stream Association of Lebanon County holds Club License No. C-4289 (LID 51736) for premises located at 1575 Weavertown Road, Lebanon, Pennsylvania.

OPINION: Generally, section 493(24)(i) of the Liquor Code prohibits licensees from offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)]. However, section 13.53 of the Board's Regulations authorizes retail licensees to give to or purchase for consumers one (1) standard-size alcoholic beverage on retail licensed premises, provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverages. [40 Pa. Code § 13.53]. Bar spending or free drinks are limited to one (1) alcoholic beverage per patron in any such offering. A standard-size alcoholic beverage is twelve (12) fluid ounces of a malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one-half (1½) fluid ounces of liquor. [Id.]. Therefore, the Club could provide one (1) standard-sized malt or brewed beverage to members who attend the Club's picnic or who help with events and/or clean-up, provided that this occurs on the licensed premises, is not contingent upon the purchase of any other alcoholic beverage, and is not prohibited by the Club's bylaws or constitution. [40 Pa. Code §§ 13.53, 5.81].

Although the Club would not be permitted to provide more than one (1) standard-sized alcoholic beverage to each member, the Club's members could bring their own alcohol beverages to the annual picnic or other events. There is nothing in the Liquor Code or the Board's Regulations that prohibits patrons from bringing their own alcohol onto licensed or unlicensed premises, so long as the alcohol is legally procured. Sections 491(2) of the Liquor Code makes it unlawful for any person to possess any beer, wine or spirits within Pennsylvania that have not been purchased through a Pennsylvania wine and spirits store, a licensed limited winery, a sacramental wine licensee, or from an entity licensed to sell malt or brewed beverages for off-premises consumption. [47 P.S. §§ 4-491(2)].

Additionally, be advised that licensees are not permitted to furnish, serve or allow people to consume any alcoholic beverages during hours they may not legally sell alcoholic beverages. Commonwealth v. Mignogna, 120 Pa. Cmwlth. 405, 548 A.2d 689 (1988). Also, be advised that licensees are held strictly liable for violations of the Liquor Code and the Board's Regulations that occur on their premises, regardless of whether their establishment supplies the alcohol for the event or if it is brought in by others, i.e., minors frequenting, furnishing alcohol to minors or visibly intoxicated persons. [47 P.S. § 4-493(1), (13)-(14)].

Further, please be aware that the Liquor Code provides that no club licensee may sell any liquor or malt or brewed beverages for consumption off the

licensed premises. [47 P.S. §§ 4-401(a), 4-407(a)]. Since alcohol cannot be sold at a licensed club for off-premises consumption, if the area where you intend to host the annual picnic or other events is not currently a licensed area, the Club may not allow members to carry alcoholic beverages lawfully sold in the establishment to that area. If a club member or guest leaves the licensed portion of the premises with unfinished containers of beer, wine or liquor purchased from the club, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) could issue a citation to the Club for engaging in the sale of alcohol for off-premises consumption. Alcohol that was not provided by the club may be taken off of the premises, although your members or guests may wish to have with them a state store receipt or some other proof that the alcohol was not acquired from the club.

Please note that your municipality may have a local ordinance that prohibits a person from possessing an open container of alcohol. It is suggested that you contact your local municipality or local police department to determine if an open container law would prohibit this.

Finally, regarding the use of monies from your general funds and the storage of free beer, there is nothing in the Liquor Code or Board’s Regulations that would prohibit the Club from using monies from the Club’s general fund to pay for the free drinks or that would require the Club to store beer that it will provide to members free of charge in a separate location. However, to the extent that monies contained in your general fund were procured pursuant to the Small Games of Chance Act, you may wish to contact the Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine if it is permissible for you to use those funds in the manner described in your e-mail.

Additionally, be advised that Board Regulations require that a club adhere to the provisions of its constitution and bylaws. [40 Pa. Code § 5.81]. Therefore, if the provisions of your club’s constitution or bylaws prohibit you from using monies from the general fund or require you to store the beer separately, then Club must adhere to its guidelines.

Alternatively, you may be eligible to obtain a special occasion permit (“SOP”). An SOP is available to an eligible entity, such as bona fide a sportsman club, which wants to sell alcohol as part of an event to raise funds for its organization. [47 P.S. § 4-408.4]. Generally, an SOP is issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. [47 P.S. § 4-408.4]. The holder of such a permit is authorized to sell liquor and/or malt or brewed

beverages to persons of legal age on any day for which the permit is issued and in any municipality in which the electorate has approved the sale of liquor and/or malt or brewed beverages. The permit may be used for special events at which the permittee is raising funds for itself. A permit holder may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. the following day.

The form for an SOP is available on the Board's website at 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 a SOP is titled "PLCB-1229 Application for Special Occasion Permit." A final determination of whether your club is eligible for an SOP would be made not by this office but by the Board's Bureau of Licensing.

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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