

September 17, 2015

Colleen Wilt  
Events Manager  
Miller Symphony Hall  
VIA E-MAIL: [cwilt@allentownsymphony.org](mailto:cwilt@allentownsymphony.org)

**RE: BYOB**

Dear Ms. Wilt:

ISSUE: This office is in receipt of your e-mail dated August 14, 2015, wherein you indicate that you are the event manager at Miller Symphony Hall in Allentown, which holds a performing arts liquor license. You explain that you have a client who wants to bring its own alcohol to an event (“BYOB”) and offer the alcohol free to its guests. You ask if this is legal.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Allentown Symphony Association, Inc. (“the Symphony”) holds Performing Arts Liquor License No. PAF-33 (LID 39984) for use by it at premises located at 23 North 6<sup>th</sup> Street, Allentown, Pennsylvania.

OPINION: There is nothing in the Liquor Code or the Board’s Regulations that prohibits individuals from bringing their own alcohol into any establishment, whether or not the establishment possesses a license issued by the Board. The Symphony is, therefore, free to allow or disallow persons renting its premises to bring their own alcohol onto the premises. However, since the local municipality in which your premises is located may have ordinances banning BYOBs or laws concerning BYOBs or open containers of alcohol, you may wish to contact your local municipality regarding the same.

Also, it is advisable for individuals that do bring alcohol on the premises to have the appropriate receipts from the purchase of such alcohol as evidence that the alcohol was purchased from a source other than your establishment. Please be advised that, even when BYOB activities are occurring, your establishment remains responsible for ensuring that alcohol is not furnished or given to minors or visibly intoxicated persons, and failure to do so may result in a citation for violating section 493(1) of the Liquor Code. [47 P.S. § 4-493(1)].

Further, please note that licensees may permit the consumption of alcoholic beverages on their licensed premises only during hours when they are permitted to serve alcoholic beverages. Pennsylvania Liquor Control Bd. v. Mignogna, 120 Pa. Cmwlth. 405, 54A.2d

689 (1988); Pennsylvania Liquor Control Bd. v. Buffalo Tavern, Inc., 118 Pa. Cmwlth. 306, 544 A.2d 1125 (1988). Sales of liquor and malt or brewed beverages at performing arts facility licensed establishments may be made two (2) hours before, during, and one (1) hour after any performance at the licensed facility; however, sales may not be made from 2:00 a.m. to 7:00 a.m. Sales may not occur prior to 1:00 p.m. or after 10:00 p.m. on Sundays. [47 P.S. § 4-413(f)(1)]. In addition, performing arts facilities that have been licensed under former sections 408.3(a) and 408.3(a.2) may sell liquor and malt or brewed beverages anytime, except from 2:00 a.m. to 7:00 a.m. or prior to 1:00 p.m. or after 10:00 p.m. on Sundays, regardless of whether there is a performance at the facility.

Finally, be advised that because your client is bringing its own alcohol, your client cannot predicate the provision of the alcohol upon a payment. In other words, the provision of the alcohol must truly be free and cannot be predicated upon the purchase of a meal, an admission ticket, donation or payment of any other fee, etc. Accordingly, anyone who is over twenty-one (21) and not visibly intoxicated must be able to request and receive a complimentary alcoholic beverage. If your client wants to sell tickets to the event, then the alcohol must be made available to non-ticket holders as well.

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

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