

November 18, 2015

Michael A. Dunmyer
VIA E-MAIL

RE: Drive Through Window

Dear Mr. Dunmyer:

ISSUE: Your e-mail of October 13, 2015 states that your business is a pizza shop which conducts the majority of its food sales via a drive through window. You inquire whether you may also sell beer via the drive through window.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Dunnys, Inc. holds Restaurant Liquor License No. R-13331 (LID 60993) for use by it at the premises located at 905 Second Street, Cresson, Pennsylvania.

OPINION: The holder of a restaurant liquor license is permitted to sell malt or brewed beverages in any amount not in excess of one hundred and ninety-two (192) fluid ounces in a single sale to one (1) person to be carried from the premises. [47 P.S. §§ 4-401(a); 4-442(a)]. The Liquor Code authorizes restaurant liquor licensees to sell alcohol only on the licensed portions of the premises. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)(4)]. Selling beer through a drive-through window would constitute the sale of alcohol off the licensed premises, unless the area outside the drive-through window were also licensed. Pennsylvania Liquor Control Board v. Burrel Food Systems, Inc., 508 A.2d 1308 Pa. Cmwlth. (1986). There is nothing in the Liquor Code or the Board’s Regulations, however, which would prohibit a restaurant licensee from having and using a drive-through window for the sale of food and non-alcoholic beverages.

The Board’s Regulations provide that no licensee may conduct any business permitted by his or her license on any other premises or any other portion of the premises other than that for which the license was issued, without the approval of the Board for the inclusion of the additional premises in the license. [40 Pa. Code § 7.21(a)]. The Board may approve an extension of a licensed premises to include

the abutting and adjacent sidewalk, or the immediate, abutting, adjacent and contiguous vacant land. [40 Pa. Code § 7.21(b)]. Thus, in order to utilize a separate portion of the premises as you have described, the licensee must seek approval from the Board for an extension of the licensed premises to include the area upon which any sale will be made. Note that, if approved, the area covered by the extension is subject to the provisions of the Liquor Code and the Board's Regulations (e.g., minors frequenting [47 P.S. § 4-493(1)]) to the same extent as the remainder of the licensed premises.

An extension application is available on the Board's website at www.lcb.state.pa.us. Click on "Licensees," then "Applications and Forms," then "Application Packet for Extension of Retail License to Cover Additional Premises."

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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY 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. 15-465