

December 1, 2015

Debra Fasching
VIA E-MAIL

RE: Hotel Licenses

Dear Ms. Fasching:

ISSUE: This office is in receipt of your e-mail dated October 26, 2015, wherein you explain that the hotel you work for will be undergoing extensive remodeling. You indicate that, upon completion of the remodel, the hotel wants to sell beer and wine from its gift shop which is located in the lobby. Before the plans are completed for the gift shop area, you want to know whether the hotel will be able to sell from this area. You also ask what physical attributes are mandated, e.g., locking coolers or doors and space restrictions, etc.

Pennsylvania Liquor Control Board (“Board”) records indicate that HISB Gateway Associates, LLC and Arcadia Hotel Venture No. 2, Inc., t/a Hampton Inn and Suites, holds Hotel Liquor License No. H-6201 (LID 62460) for use by it at premises located at 200 Gateway Drive, Bethlehem, Pennsylvania. Board records also indicate that you are the Board-approved manager.

OPINION: The Liquor Code defines a hotel as:

...any reputable place operated by a responsible person of good reputation where the public may, for a consideration, obtain sleeping accommodations, and which shall have the following number of bedrooms and requirements in each case--at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode...

[47 P.S. § 4-461(c)]. 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 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)].

If the gift shop is included in the licensed area, which licensed area meets the definition of a “hotel,” 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 the licensee requests and receives the Board’s approval to allow the sale of sundries. [40 Pa. Code § 3.52(c)].

Also, please note that, as stated above, 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 also permits 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.]. Therefore, the only off-premises sales of wine that could be conducted by a hotel licensee are partially consumed bottles as discussed above.

Additionally, be advised that if the area being remodeled is not part of the currently licensed premises and you wish to extend the license to include this area, you will need to file an extension of premises. The forms necessary to apply for extension of licensed premises may be acquired from the Board’s Bureau of Licensing (“Licensing”) at (717) 783-8250, or via the Board’s website, at <http://www.lcb.state.pa.us>, by selecting “Licensees,” then “Applications/Forms,” then “Application Packets,” and then “Application Packet for Extension of Retail License to Cover Additional Premises.”

Alternatively, assuming the remodel will not extend the currently licensed area, you should send a letter to Licensing informing the Board of the hotel’s intention and how the affected portions of the licensed premises will be reconfigured. Be advised that it is Licensing, and ultimately the three (3)-member Board which makes the decision as to whether a particular request to reconfigure licensed premises or to extend the licensed premises, is in compliance with the Liquor Code and the Board’s Regulations.

Further, be advised that if, as a result of the remodel, the operations of the hotel cease for fifteen (15) or more days, the hotel would need to place its license into safekeeping within fifteen (15) days of discontinuing operations. [47 P.S. § 4-474]. After placing the license into safekeeping, the hotel would have no further authority to sell alcoholic beverages on the formerly licensed premises, unless and until the licensee applied to have the license returned from safekeeping. [40 Pa. Code § 4.31(e)].

Finally, regarding your question as to the required physical attributes, you may wish to read the “Information Booklet for Retail Licenses.” This booklet is available on Board’s website, by selecting “Licensees,” then “Licensing Info,” then “Pamphlets and Booklets,” and then “LCB-19 | Information Booklet for Retail Licenses.”

Please do not hesitate to contact this office should you have additional questions.

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
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LCB Advisory Opinion No. 15-480