

January 27, 2016

Bridget Ryan
VIA E-MAIL:

RE: Outside event

Dear Ms. Ryan:

ISSUE: This office is in receipt of your email of December 27, 2015, wherein you state only the following: “My restaurant would like to hold an event in our parking lot. I have some questions regarding [*sic*] the rules for serving alcohol outside.”

OPINION: It is assumed for purposes of this response that your restaurant holds a license issued by the Pennsylvania Liquor Control Board (“PLCB”). In order to allow sales and service of alcoholic beverages beyond an existing licensed premises, a licensee must apply for an extension of its licensed premises to cover any additional area. Section 7.21(b)(2) of the PLCB’s Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. [40 Pa. Code § 7.21(b)(2)]. A licensee requesting such an extension must obtain and file with its application for extension of premises written approval issued by the proper authorities of the municipality in which the license is issued if the proposed extension includes a sidewalk. Extensions to the sidewalk or the contiguous vacant land must include a certification by the municipality approving operation of the licensee on the proposed extension area. Proposed extensions to the sidewalk will be subject to the conditions that patrons must be seated at a table in order to receive service, there must be no fewer than two tables for service, and there may not be a service bar on the sidewalk. [40 Pa. Code § 7.21(d)]. Further, such extension applications must be accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of abutting streets and a plotting of the principal licensed premises.

It should be noted that a licensee must have the exclusive right to occupy the outside area in order for it to apply for an extension of premises covering same. Once the extension is approved, the subject area becomes subject to all restrictions in the

Liquor Code and the PLCB's Regulations, including the prohibition on minors frequenting the premises. [47 P.S. § 4-493(14)].

Please note that it is the PLCB's Bureau of Licensing initially, and the three (3)-member Board ultimately, that decides whether a particular extension request is in compliance with the Liquor Code and the PLCB's Regulations, and whether or not to grant the extension. The forms needed may be found on the PLCB's website at www.lcb.state.pa.us.

Another possibility would be for your restaurant to acquire an Off-Premises Catered Event ("OPCP"). Pursuant to section 406(f) of the Liquor Code, holders of restaurant licenses, hotel licenses, eating place retail dispenser licenses, breweries holding a brewery pub license, and performing arts facilities licenses may apply for and obtain an OPCP, which allows the permittee to hold a "catered function" off its licensed premises and on otherwise unlicensed premises. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; no sales for take-out are permitted. [47 P.S. § 4-406(f)].

A "catered function" is defined as:

the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.

[47 P.S. §1-102].

As noted in section 406(f) of the Liquor Code:

(f) The holder of a hotel or restaurant liquor license may obtain an off-premises catering permit subject to section 493(33) to hold a catered function off the licensed premises and on otherwise unlicensed premises where the licensee may sell wine, liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture together with food, for consumption on

those premises. Functions conducted under the authority of the permit shall be subject to the following:

- (1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;
- (2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;
- (3) each catered function shall last no longer than one day and not more than fifty catered functions may be held each calendar year by each license holder for use with a particular license;
- (4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;
- (5) a permit shall not be issued to an applicant whose license is in safekeeping;
- (6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);
- (7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);
- (8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;
- (9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the

local police and the enforcement bureau at least seven days in advance of the event;

(10) Written notice shall be provided to the board at least thirty days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least fourteen days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(11) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements of this act or has previously conducted a function that did not meet the requirements of this act;

(12) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the

premises during the function or any activities related to the function;

(13) no catered function may be held for more than five hours per day and must end by midnight;

(14) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), for an event which has the sole purpose of raising funds for that nonprofit organization; or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(15) the catered function location shall be subject to section 493(34) of this act;

(16) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(17) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(18) a permit shall not be issued to a licensee for use in any location that is mobile; and

(19) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

[47 P.S. § 4-406(f) (footnotes omitted)]. Please note that the OPCP application must be filed by March 1st of the calendar year; there is no statutory provision that allows the PLCB to accept applications after that date.

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

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