

February 12, 2016

Dan Brown

Via Email:

RE: Compliance Question

Dear Mr. Brown:

ISSUE: This office is in receipt of your email of January 4, 2016, wherein you state the following, “What happens when a [*sic*] agent comes in and has someone under age attempts [*sic*] to get a drink and the bartender does not card that person (sting)?”

Pennsylvania Liquor Control Board (“PLCB”) records indicate that SACPA Holdings LLC holds Restaurant Liquor License No. R-20392 (LID 59186) for use by it at premises located at 2077 Interchange Road, Erie, Pennsylvania.

OPINION: It is assumed for purposes of this response that you are inquiring about the Pennsylvania State Police, Bureau of Liquor Control Enforcement’s (“BLCE”) Age Compliance Program. Initially, please be advised that in citation cases initiated by BLCE, the PLCB acts as an appellate court for decisions from the Office of the Administrative Law Judge. It would be inappropriate for the PLCB to comment on the specifics of a particular citation.

That said, generally speaking, PLCB licensees are held strictly liable for violations of the Pennsylvania’s Liquor Code (“Liquor Code”) and the Board’s Regulations that occur on the licensed premises. Pennsylvania Liquor Control Bd. v. TLK, Inc., 518 Pa. 500, 544 A.2d 931 (1988). A licensee is subject to citation from BLCE for violations of the Liquor Code (such as for furnishing alcohol to minors), PLCB’s Regulations and also for certain violations of the Pennsylvania Crimes Code.

Section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] prohibits licensees, or their servants, agents, or employees, from furnishing alcohol to minors. The penalty for this conduct is set forth in section 471 of the Liquor Code [47 P.S. § 4-471], which provides in pertinent part:

If the licensee has been cited and found to have violated section 493(1) insofar as it relates to sales to minors or sales to a visibly intoxicated person, section 493(10) insofar as it relates to lewd, immoral or improper entertainment or section 493(14), (16) or (21), or has been found to be a public nuisance pursuant to section 611, or if the owner or operator of the licensed premises or any authorized agent of the owner or operator has been convicted of any violation of the act of April 14, 1972 (P.L. 233, No. 64), known as “The Controlled Substance, Drug, Device and Cosmetic Act,” or of 18 Pa. C.S. § 5902 (relating to prostitution and related offenses) or 6301 (relating to corruption of minors), at or relating to the licensed premises, the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both.

[Id.].

The statute further provides a modified penalty if a licensee has had a clean record for the past four years and is in compliance with the PLCB’s Responsible Alcohol Management Program as follows:

However, if a license has been cited and found to have violated section 493(1) as it relates to sales to minors or sales to a visibly intoxicated person but, at the time of the sale, the licensee was in compliance with the requirements set forth in section 471.1 and the license had not sold to minors or visibly intoxicated persons in the previous four years, then the administrative law judge shall immediately suspend or revoke the license or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both.

[Id.].

Additionally, section 494 of the Liquor Code [47 P.S. § 4-494] provides criminal penalties for certain violations of the Liquor Code. Section 494(a) of the Liquor Code provides:

Any person who shall violate any of the provisions of this article, except as otherwise specifically provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and on failure to pay such fine, to imprisonment for not less than one month, nor more than three months, and for any subsequent offense, shall be sentenced to pay a fine not less than three hundred dollars (\$300), nor more than five hundred dollars (\$500), and to undergo imprisonment for a period not less than three months, nor more than one year, or both. If the person, at or relating to the licensed premises, violates section 493(1), (10), (14), (16) or (21), or if the owner or operator of the licensed premises or any authorized agent of the owner or operator violates the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or 18 Pa.C.S. § 5902 (relating to prostitution and related offenses) or 6301 (relating to corruption of minors), he shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000) or to undergo imprisonment for a period not less than three months, nor more than one year, or both.

[47 P.S. § 4-494].

Finally, as BLCE's Age Compliance Program is not administered by this agency, you are encouraged to either contact BLCE, or private counsel, seasoned in Liquor Law.

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
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. 16-019