

April 1, 2016

Michael B. Kearney  
President  
Nexus Hospitality Management  
**VIA E-MAIL**

**RE: Event Location**

Dear Mr. Kearney:

ISSUE: This is in response to your e-mail of February 15, 2016, wherein you state that two non-profit entities, Friends of the Northeast Railroading Association and Erie Lackawanna Dining Car Preservation Society, are hosting an event in April 2016, in railway cars that will be parked on the railroad tracks ten feet from your hotel property line and forty feet from your kitchen's backdoor. The tracks have been cleared and reserved by Steamtown National Park Service; the cars will be stationary and will remain for two days. Your hotel is to provide food and bar service for the approximately forty attendees in the dining car. You inquire if you should apply for an extension of premises or if you are covered as a licensed "cater-out" operator.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Akshar Lackawanna Station Hospitality, L.P. ("Licensee") holds Hotel Liquor License No. H-5316 (LID 56403) for use by it at 700 Lackawanna Avenue, Scranton, Pennsylvania.

OPINION: An Off Premises Catering Permit ("OPCP") will permit you to provide the food and bar service on the dining car, which will be stationed on the track during the event (the dining car cannot be mobile during the event). However, March 1<sup>st</sup> of each calendar year is the cutoff for applying for an OPCS and there is no statutory provision that allows the PLCB to accept OPCS applications after March 1<sup>st</sup>.

An OPCS 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).

In response to your inquiry regarding an extension of premises, an application and PLCB approval are required, and if granted, the extension permits a licensee to use abutting and adjacent sidewalk and/or the immediate, abutting, adjacent and contiguous vacant land. 40 Pa. Code § 7.21. Although the PLCB has the discretion to approve an application for extension to an area that is not immediate, abutting, adjacent or contiguous, the property

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herein, the railroad track and the cars to be stationed there must be in Licensee's exclusive control and not an active public thoroughfare during the requested extension period. Also, Licensee's extension area cannot extend beyond a public thoroughfare (See Roberts v. Pennsylvania Liquor Control Board, 146 Pa. Cmwlth. 64, 604 A.2d 1152 (1992)). A determination regarding the acceptability of Licensee's request to extend its service area will be made after Licensing receives and reviews your extension application.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB's Regulations, please feel free to once again 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.

Sincerely,



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. 16-077