

June 3, 2016

Q. Monk Murphy
Wolfgang Puck Catering
VIA E-MAIL

RE: Donated Alcohol

Dear Mr. Murphy:

ISSUE: This is in response to your e-mail of March 10, 2016, wherein you state that Wolfgang Puck Catering & Events LLC (“WPC”) has a non-profit 501(c)(3) client that would like to host a ticketed event at your facility. The non-profit wants to have beer donated by a local importing distributor (“ID”) and have WPC sell the beer, with the non-profit retaining the revenue from its sale. WPC would be selling other alcoholic beverages that would not be donated, with revenue of those sales remaining with WPC. You inquire if it is legal for the non-profit to generate revenue from the sale of donated alcoholic beverages; if WPC, as a licensee, is able to be the agent by which sales are conducted; and if WPC can charge a percentage of sales as a fee, in addition to a labor charge. If this arrangement is impermissible, you inquire as to how to lawfully execute the arrangement.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Wolfgang Puck Catering & Events, LLC, holds Restaurant Liquor License No. R-15397 (LID 71719) for use by it at 1000 Franklin Avenue, Philadelphia, Pennsylvania.

OPINION: Nothing in the Liquor Code or the PLCB’s Regulations would prohibit a non-profit entity from receiving donated beer, provided that such beer is initially lawfully obtained from a manufacturer, importing distributor, or distributor. Furthermore, a license is required to sell alcohol in Pennsylvania. “Sale” is defined as any transfer for a consideration and would include the offering of beer to persons purchasing tickets. 47 P.S. § 1-102.

If there is no cost associated with the donated beer, then there is nothing in the Liquor Code or the PLCB’s Regulations that would prohibit the donation of alcohol by a licensee (ID) to an unlicensed entity, such as a third-party non-profit, for subsequent

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service by your employees or agents. However, if the third-party non-profit is selling event tickets (to include food and the donated alcohol), this would be considered a “sale” of alcohol as defined in the Liquor Code, 47 P.S. § 1-102, and the non-profit would need a license/permit to do so.

Accordingly, in response to your first question, it is not lawful for the non-profit organization to sell/generate revenue from donated alcohol unless it holds a license or permit from the PLCB to do so. Please note that, even with a special occasion permit, the non-profit would not be able to conduct its sales on your already-licensed premises.

As you may be aware, WPC is prohibited from accepting anything of value, including donated beer, from a licensee of a different class. 40 Pa. Code § 13.51. Therefore, WPC may not accept donated beer from a licensee of a different class and/or profit from the sale of it.

In response to your second and third questions, WPC would not be permitted to act as the non-profit’s agent to sell the donated beer or to keep any portion of revenue generated from the sales. There is no agreement to execute by which your participation in the sale of the donated beer, as you described it, would be lawful on your licensed premises.

Because your establishment is licensed by the PLCB, it is suggested that when a third-party entity wants to provide the alcohol for its event, whether donated or purchased, you should require the client to provide proof that the wine, spirits, or beer was lawfully acquired in Pennsylvania. Licensees are strictly liable for violations of the Liquor Code and its attendant laws and regulations that occur on the licensed premises. Pennsylvania Liquor Control Board v. TLK, Inc., 544 A.2d 931 (Pa. 1988). Failure to require such proof may place you at risk of citation, which may result in a suspension or revocation of the license. 47 P.S. § 4-471(b).

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

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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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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. 16-195