

July 5, 2016

Dan Hoch
Double Tree by Hilton
701 Penn Street
Reading, PA 19601
VIA E-MAIL

Re: Event on Rooftop of Parking Garage

Dear Mr. Hoch:

ISSUE: This is in response to your e-mails dated June 16 and 17, 2016, wherein you ask about the possibility of catering an event on the roof of the parking garage adjacent to your licensed hotel. The parking lot is owned by the City of Reading but the hotel has a lease to use the majority of the spaces and has permission to use the parking roof. You explain that the lot is connected to the hotel lobby by elevators and stair towers, as well as exits through your property's covered entrance way. In addition, you explain that the parking garage is the same height as the hotel.

A yoga group is interested in holding yoga sessions on the roof of the parking garage for one hour, followed by an hour of beer and wine. These events are scheduled for July 13 and 27, August 10 and 24, and September 14 and 28. The yoga provider is charging a ticket for the event. It is assumed that the ticket to the event will not give the participants any free alcohol. You explain that there would be a cash bar on the rooftop of the garage with three or four bartenders, a couple of servers and some high top cocktail tables. You ask if your hotel license extends to the roof of the parking garage.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Reading Hospitality LLC holds Hotel Liquor License No. H-6494 (LID 71990) for the premises at 701 Penn Street, Reading, Pennsylvania.

OPINION: 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) (emphasis added). Patrons may carry their beverages throughout the hotel property. 47

P.S. § 4-406(e). Therefore, while you may not sell alcohol to patrons in any unlicensed areas, there is nothing that prohibits a patron from purchasing an alcoholic beverage on the licensed premises and transporting it to another area, such as a hospitality room, as long as the alcoholic beverages remain on the hotel property. Because of the relationship and proximity of the hotel and the parking garage, the rooftop of the parking garage would still be considered hotel property.

Thus, your hotel liquor license would not allow you to sell any alcohol on the rooftop of the parking garage, although guests could purchase drinks in the part of the hotel habitually used for serving food, and then carry the drinks to the rooftop. In order to sell alcohol on the rooftop, you could apply for a temporary extension of the licensed premises to cover that area, or sell under the authority of an off premises catering permit (“OPCP”).

With regard to obtaining a temporary extension, section 7.25 of the PLCB’s Regulations provides for the following procedure:

- (a) The Board has discretion to approve a temporary extension of licensed premises upon filing of an application accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of the abutting streets and a plotting of the proximity of the principal licensed premises.
- (b) The application must describe the entire scope of business to be conducted at the temporarily extended licensed premises and include the specific dates and hours business will be conducted.
- (c) A nonrefundable fee of \$220 must accompany an application for temporary extension of licensed premises.
- (d) The additional premises for which it is desired to temporarily extend a license shall be completely equipped for the carrying on of the type of business permitted under the license, but sales or storage of liquor or malt or brewed beverages may not take place in the temporarily extended premises until approval has been given by the Board.
- (e) Approval may be in the form of a new license, giving the additional address/location or a letter authorizing the use of the additional temporary premises extension. Board approval or letter of authorization shall be maintained on the temporarily extended licensed premises.

40 Pa. Code § 7.25. Since time is of the essence, and there is no guarantee that the application would be approved, an extension of premises may not be the best solution for you.

Your best option may be to hold the event under the authority of an OPCP. PLCB records indicate that your hotel has already applied for an OPCP for 2016. Please note that there are a number of requirements associated with the OPCP.

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.

Additionally, as noted in section 406(f) of the Liquor Code (please note numbers 2 and 10):

- (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) (emphasis added, footnotes omitted). Therefore, should you decide to use your OPCP for these events, and the event meets the requirement set forth above, you would need to pay a late fee for the second event, July 27, since you will be giving less than thirty days' notice. Please contact the PLCB's Bureau of Licensing at 717-783-8250 for guidance on registering your OPCP dates, or visit the PLCB's website at www.lcb.state.pa.us and go to Licensing/Resources for Licensees/PLCB+.

If your servers have not received training through the Responsible Alcohol Management Program ("RAMP"), information is available on the PLCB's website under the Education link. Both classroom and online training is available. If you have any questions about RAMP training or whether your servers are RAMP trained, you may contact the RAMP Office at 717-772-1432.

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.

Dan Hoch
July 5, 2016
Page 6

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
Ron Murphy, Product Management and Pricing Division

LCB Advisory Opinion No. 16-241