

August 9, 2016

Michael J. Sheridan, Esquire
VIA E-MAIL

Re: Off-Premises Consumption

Dear Mr. Sheridan:

ISSUE: This is in response to your e-mail dated July 6, 2016, wherein you advise that you represent a restaurant liquor licensee. The licensee wants to establish an outdoor horseshoe court on an unlicensed portion of the property. You note that no food or beverages would be served to patrons at the outdoor horseshoe court, but your client would like to know if patrons can purchase take-out beer and take-out food and consume both in the vicinity of the horseshoe court, without requiring an extension of the licensed premises.

OPINION: A liquor license authorizes the licensee to sell alcoholic beverages only on the licensed areas of its premises. 47 P.S. § 4-406(a.1); 40 Pa. Code § 7.21(a). However, as you seem to be aware, a restaurant licensee is permitted to sell malt or brewed beverages for off-premises consumption, as long as the sales occur on the licensed premises. Patrons are permitted to purchase beer on the licensed premises, subject to the maximum amount limits, and then transport the beer outside themselves. 47 P.S. § 4-406(e). Maximum limits are not more than 192 fluid ounces in a single sale to one person. 47 P.S. § 4-407(a).

With only a restaurant liquor license, no other types of alcohol, such as liquor or wine, may be taken off the licensed premises. However, effective August 8, 2016, a restaurant liquor licensee may obtain a wine expanded permit under the provisions of Act 39 of 2016. This permit allows its holder to sell wine-to-go until 11:00 p.m. on Monday through Saturday, and on Sundays if the holder holds a Sunday sales permit. 47 P.S. § 4-415(a)(2). With such a permit, your client would be able to sell both beer and wine for off-premises consumption.

There is a \$2,000 application fee for a wine expanded permit and an annual renewal fee of 2% of the cost of wine purchased from the PLCB for off-premises consumption. 47 P.S. § 4-415(b). A permit cannot be issued to a licensee whose license is subject to a pending objection from Licensing. 47 P.S. § 4-415(a)(3).

Act 39 imposes the following parameters for wine-to-go sales under an expanded wine permit:

- A permittee may sell up to 3,000ml (3 liters) of wine in a single transaction. 47 P.S. § 4-415(d).
- Sales of wine must occur at a specifically designated area of the licensed premises, but other (non-alcohol) items may be purchased at the same location. 47 P.S. § 4-415(a)(4).
- Sales of wine must occur at a designated register which is staffed at all times by a cashier who is at least eighteen years old and is RAMP-trained. No sales may occur elsewhere (including self-checkout lanes). 47 P.S. § 4-415(a)(9).
- A permittee must use a transaction scan device to verify the age of anyone who appears to be under thirty-five years old. 47 P.S. § 4-415(a)(8), (9).
- A permittee cannot sell wine-to-go for a price that is lower than the price at which it purchased the product from the PLCB. 47 P.S. § 4-415(f).
- A permittee may not sell a private label product, which is defined as a product made under contract by a manufacturer/its agent for the exclusive right of a retailer. 47 P.S. §§ 1-102, 4-415(g).
- A permittee must comply with all components of RAMP. 47 P.S. §§ 4-415(a)(6), 4-471.1.

Wine may be stored in a non-contiguous area that is not accessible to the public, is locked at all times, and is not accessible to employees under eighteen years old. 47 P.S. § 4-415(a)(6).

Wine expanded permit holders must pay sales tax on purchases of wine made from the PLCB at the time of purchase, just as they would for any other product purchased from the PLCB. Permittees are also required to collect the sales tax from the consumers to whom they sell wine-to-go. Permittees can then seek reimbursement from the Department of Revenue for the sales tax which they previously paid to the PLCB. 47 P.S. § 4-415(e).

Act 39 specifies that the minors frequenting rules in section 493(14) of the Liquor Code do not apply for purposes of selling wine for off-premises consumption. 47 P.S. §§ 1-102, 4-415(a)(5).

As for whether your client may allow patrons to consume food and alcohol in the vicinity of the horseshoe court, you are advised to check with the municipality regarding open

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container laws. As long as the sale of alcohol occurs on the licensed premises, your client would not need to obtain an extension of the premises.

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,

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. 16-287