September 6, 2016

Michael J. Hudock, III
VIA E-MAIL

RE: Vendor Providing Food Service

Dear Mr. Hudock:

ISSUE: This office is in receipt of your e-mail of July 22, 2016, wherein you provide that the Greek Orthodox Church of the Community of Verona and Oakmont, PA ("Licensee") holds two catering club licenses. Licensee is contemplating entering into an exclusive contract with a third party vendor ("Vendor") to provide food service for its two licensed establishments.

You request an advisory opinion with respect to the following scenarios:

1. Is it permissible for the Vendor's employees, not Licensee's employees, to operate Licensee's establishments and serve alcohol during catered events?

2. Does the answer to question # 1 change if the Vendor holds a Pennsylvania Liquor Control Board ("PLCB") restaurant liquor license and the Vendor's employees who would be serving the alcohol would be RAMP-trained?

3. Does the answer change if Licensee's Board-approved manager/stewards for its two licensed establishments are present during the catered events?

Records of the PLCB indicate that Licensee holds Catering Club Liquor License No. CC-2093 (LID 68509) for use at the premises located 12 Washington Avenue, Oakmont, Pennsylvania and Catering Club Liquor License No. CC-1697 (LID 69551) for use at the premises located at 10 Washington Avenue, Oakmont, Pennsylvania.

OPINION: Initially, section 5.82 of the PLCB's Regulations provides:

> (a) If a club does not sell food it may permit a food concession to be operated by a person who is not an officer or employe of the club, and the concessionaire may not hire a person who is an officer or employe of the club or who is a licensee or an employe of another licensee.

> (b) The concessionaire shall buy, prepare, sell and collect for the food, and receive the profits, and pay his own employes. **Neither the concessionaire nor his employes are permitted to handle or dispense liquor or malt or brewed beverages**; and club employes are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages shall be presented to each member served.
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> (c) Records covering operations of the concession shall be maintained for a period of 2 years on the licensed premises. The records shall show the cost of food, supported by invoices; receipts from sale of food supported by cash register tape or guest checks; rental paid for the privilege and equipment used; the name and address, social security number and salary paid to each employe; and other expenditures.

40 Pa. Code § 5.82 (emphasis added).

Although you state that Licensee is planning to contract with Vendor to provide food service at its two establishments, this would be problematic if Vendor and Licensee are not adhering to section 5.82 of the Board's Regulations regarding a food concessionaire. Specifically, section 5.82(b) of the PLCB's Regulations states, *inter alia*, that a food concessionaire is not permitted to handle or dispense alcoholic beverages and a licensee's employees would not be permitted to serve or collect for food. Therefore, if Vendor is acting as Licensee's food concessionaire, the answer to your three questions would be that Vendor's employees would not be permitted to operate the establishment and serve alcoholic beverages. This prohibition would not change if the Vendor holds a restaurant liquor license or if Licensee's PLCB Board-approved manager/steward would be present for the catered events.

However, if Licensee wants Vendor to operate its establishment and serve alcoholic beverages during catered events, another option may be for Vendor to become Licensee's management company. Section 102 of the Liquor Code, 47 P.S. § 1-102, defines a "management company" as "any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises." Section 3.1 of the Board's Regulations, 40 Pa. Code § 3.1, defines "management contract" as an "agreement between a licensee and a management company to operate, manage or supervise all or part of the operation of the licensed premises."

With regard to your first and third questions, if Vendor is Licensee's management company, it would not be a problem for Vendor's employees to operate the licensed premises and serve alcohol on behalf of the two catering club licensees, whether the Board-approved manager/steward was present or not. Also, please note that although a Board-approved manager/steward is expected to devote full time and attention to the club licensee, 40 Pa. Code § 5.23(a), section 5.23(i) of the PLCB's Regulations provides that a club

manager may hold outside employment as long as that employment is not prohibited by section 411 of the Liquor Code. 40 Pa. Code § 5.23(i). Sales would need to be conducted under Licensee's name and tax account.

As to your second question regarding the impact if Vendor held a restaurant liquor license, there is no prohibition against someone holding an interest in multiple licensees, as long as they are within the same "class," which means an individual or corporate licensee may hold any number of retail licenses (club, catering club, eating place malt beverage, hotel, or restaurant). 47 P.S. §§ 4-411, 4-443. Therefore, it would not be a problem if Vendor held a restaurant liquor license and was also the management company for Licensee's two catering club establishments.

Lastly, section 5.81 of the PLCB's Regulations, 40 Pa. Code § 5.81, requires a club licensee to adhere to the provisions of its constitution and bylaws. Therefore, if the two catering clubs' constitutions and/or bylaws place constraints on the utilization of a concessionaire and/or management company, Licensee must adhere to such restrictions.

If you have any additional questions regarding the Liquor Code or the PLCB's regulations, feel free to 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. 16-316