

August 29, 2016

Gerald G. DeAngelis, Esquire
512 Market Street
P.O. Box 309
Freeport, PA 16229
VIA E-MAIL

RE: Independent Concessionaires Operating on a Licensed Premises

Dear Mr. DeAngelis:

ISSUE: Your letter of July 18, 2016 seeks clarification as to whether independent concessionaires may operate on a licensed premises. Specifically, your client operates a dirt car race track, with races weekly on Fridays from April through October, as well as various special events throughout the racing season. You advise that a Kiwanis club operated a booth selling peanuts as a major source of its fundraising activities for many years, prior to your client's acquisition of the liquor license. A letter dated March 17, 2016 from you to the Bureau of Licensing ("Licensing") indicates that your client has discontinued this arrangement. However, you refer to unspecified vendors, who may vary from week to week, and whom your client apparently wishes to permit to sell other unspecified items on the licensed premises, presumably including "peanuts, pizza, hot sausage sandwiches, souvenirs, t-shirts, etc." You inquire whether this is permissible.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Tomson Scrap Metal is the holder of Restaurant Liquor License No. R-21486 (LID 72678) for use at the premises located 313 North Park Road, Sarver, Pennsylvania.

OPINION: Initially, note that "restaurant" is defined as, *inter alia*, "a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public." 47 P.S. § 1-102.

A licensee may not permit other persons to operate another business on the licensed premises. 40 Pa. Code § 3.52(a). The determination as to whether a given activity rises to the level of another business is fact-specific and is investigated by Licensing. Should your client wish to determine definitively whether the activities proposed by the

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unspecified vendors would rise to the level of another business, you may wish to provide additional details to Licensing so that an investigation may be initiated.

Please note that a licensee may seek Board approval to allow an interior connection between the licensed premises and another business. 40 Pa. Code § 3.52(c). Again, such requests are fact specific and would require an investigation by Licensing.

Please further note that this office has held that a one-time event, occurring on a single day or weekend, does not rise to the level of “another business” and therefore is not prohibited by section 3.52(a) of the PLCB’s Regulations, even if the event occurs on an annual basis. However, if independent concessionaires are offered on a regular basis, even if the individual vendors vary week to week, this exception would not apply.

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
Frank Miller, Chief, Licensing Evaluation Division

PLCB Advisory Opinion No. 16-317