

October 5, 2016

Mike Haugh  
**VIA E-MAIL**

**RE: Off-Premises Service Question**

Dear Mr. Haugh:

ISSUE: This office is in receipt of your e-mail dated August 24, 2016, wherein you indicate that your business conducts an annual alumni event for a college. You advise that the event is ticketed, and you have, in the past, used your “off premise liquor license” to sell your house-brewed beer, wine, food and catering services.

Due to a change in your office personnel, you did not apply for an off premise license when you renewed your regular liquor license. You advise that you have had the off-premises license for several years, and due to the recent changes to the law, you were afforded the opportunity to apply for an off-premises license mid-year. You submitted the application and fee, and learned that there is a sixty-day waiting period following submission of the application. You requested an exception to that waiting period from the Director of Licensing; however, that request was denied.

You now ask what options you have that would allow you to cater the event at the college. You ask if you can provide the beer and wine at no charge or have it donated. You indicate that the college does not want to purchase the alcohol itself. You propose that you could charge the college for the food, as you have done in the past, and give away the alcohol to help maintain the business relationship with the college and promote your house-brewed beer. You also would charge the college for bartenders and a bar set-up fee, as you do with all your events, at your established rate of \$4.00 per person.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Hospitality Management Corp holds Brewery License No. G-520 (LID 68961) for the premises located at 1 Center Square, P.O. Box 448, Abbottstown, Pennsylvania. In addition, PLCB records reflect that Hospitality Management Corp T Michael Haugh holds Hotel Liquor License No. H-247 (LID 23310) for the same location.

OPINION: As you know, pursuant to section 406(f) of the Liquor Code, holders of restaurant or hotel liquor licenses, brewery pub licenses, and eating place malt beverage licenses may apply for and obtain an Off-Premises Catering Permit (“OPCP”), which allows the permittee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. 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. 47 P.S. § 4-406(f); see also § 4-442(f) (pertaining to eating place malt beverage licenses).

As you indicated, recent changes to the Liquor Code included expansion of OPCPs. The PLCB may now accept OPCR applications after the March 1 statutory deadline, provided that the applications are submitted at least sixty days prior to the first catered event by licensees that are in good standing. 47 P.S. § 4-493(33). The statute does not afford the PLCB any discretion to waive that sixty-day period.

You indicate that the alumni function is a ticketed event. Assuming that there is a cost associated with the ticket, and a ticket is required to have access to the alcoholic beverages, you would not be able to provide alcohol at the event. As you know, a license or permit is required to sell alcohol in Pennsylvania. “Sale” or “sell” is defined broadly and includes any transfer for a consideration. 47 P.S. § 1-102. Therefore, because this event is being held off your licensed premises, you would not be able to provide alcohol where access to the alcohol is predicated upon the purchase of a ticket. Even if you do not charge the college for the alcohol you provide, or the alcohol is donated, the problem arises from the cost associated with access to the alcohol at the event.

In order for you to provide alcoholic beverages, the alcohol being provided must truly be free, meaning that anyone who is twenty-one years of age or older and not visibly intoxicated, whether a ticket-holder or not, must be able to request and receive the alcoholic beverages being offered. It must be made clear that the ticket cost is for admission to the event and non-alcoholic beverages, food, and entertainment. You could then offer the alcoholic beverages as a tasting event.

Tastings may be conducted by licensed brokers, distributors, importing distributors, and manufacturers or their agents upon licensed or unlicensed premises. 40 Pa. Code § 13.211(a). Any products used must be properly procured and registered, and taxes on the products must be paid. 40 Pa. Code § 13.211(b)(1). Again, there can be no purchase requirement associated with such tasting. 40 Pa. Code § 13.211(b)(2). Finally, no more than one standard size alcoholic beverage of each product may be

provided to each tasting participant. 40 Pa. Code § 13.211(b)(3). A “standard size alcoholic beverage” is defined as four fluid ounces of wine, twelve fluid ounces of malt or brewed beverages, or one and one-half fluid ounces of spirits. 40 Pa. Code § 13.201. Therefore, offering an unlimited number of drinks to attendees of the event would not be permissible.

Please do not hesitate to contact this office should you have additional questions.

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. 16-398