

October 14, 2016

Brendan Cox
VIA E-MAIL

RE: Extension

Dear Mr. Cox:

ISSUE: Your e-mail of August 11, 2016 requests information regarding an extension of license for a restaurant liquor licensee. Specifically, you indicate that you are considering buying two properties next to your current property. One of these is a parking lot, and on the other side of the parking lot is a property with a store front. You inquire whether it is possible for you to utilize your license on the store front property even though there will be a parking lot in between the two properties.

OPINION: It is assumed for purposes of this response that your restaurant holds a license issued by the Pennsylvania Liquor Control Board (“PLCB”).

Initially, because you are contemplating a significant commercial undertaking in a highly-regulated industry, it is recommended that you consult experienced private counsel to discuss your specific factual circumstances and how they relate to the applicable laws.

In order to allow sales and service of alcoholic beverages beyond an existing licensed premises, a licensee must apply for an extension of its licensed premises to cover any additional area. A licensee may extend its license to immediate, abutting, adjacent, and contiguous vacant land. 40 Pa. Code § 7.21(b)(2). A licensee requesting such an extension must obtain and file with its application for extension of premises written approval issued by the proper authorities of the municipality in which the license is issued if the proposed extension includes a sidewalk. Extensions to the sidewalk or the contiguous vacant land must include a certification by the municipality approving operation of the licensee on the proposed extension area. Proposed extensions to the sidewalk will be subject to the conditions that patrons must be seated at a table in order to receive service, there must be no fewer than two tables for service, and there may not be a service bar on the sidewalk. 40 Pa. Code § 7.21(d). Further, such extension applications must be accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of abutting streets and a plotting of the principal licensed premises.

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A licensee must have the exclusive right to occupy the outside area in order for it to apply for an extension of premises covering same. Once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and the PLCB's Regulations, including the prohibition on minors frequenting the premises. 47 P.S. § 4-493(14).

A licensed premises cannot be intersected by a public thoroughfare. Roberts v. PLCB, 604 A.2d 1152 (Pa. Cmwlth. 1992).

In addition, Commonwealth Court has held that separate and distinct entities may not share a single liquor license. PLCB v. GMR Restaurants of Pennsylvania, Inc., 689 A.2d 323 (Pa. Cmwlth. 1997).

Please note that it is the PLCB's Bureau of Licensing initially, and the three-member Board ultimately, that decides whether a particular applicant is in compliance with the Liquor Code and the PLCB's Regulations, and whether or not to grant the application.

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

Very truly yours,



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. 16-409