

January 11, 2017

AMENDED

Heather Warner
Mom's Organic Market, Inc.
VIA E-MAIL

RE: Interior Connections

Dear Ms. Warner:

ISSUE: This office is in receipt of your e-mail dated October 11, 2016, in which you advise that your company holds a restaurant liquor license for a premises located within a grocery store. You indicate that the premises has the "proper barriers," presumably referring to the required partition between the licensed and unlicensed portions of the store.

You ask whether you are permitted to ring food and alcoholic beverages through the same cash register, or if they must be rung up on separate registers. You also inquire as to whether items offered for sale in the unlicensed grocery store can be paid for, or rung up, at the cash registers located within the licensed restaurant. Finally, you ask if the electronic inventory system for the licensed restaurant can include items sold in the unlicensed grocery store, or if you need to have two separate inventory and point of sale ("POS") systems for items sold in the licensed restaurant and items sold in the unlicensed grocery store.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Mom's Organic Market, Inc. ("Mom's") holds Restaurant Liquor License No. R-1422 (LID 72852) for the premises located at 34 South 11th Street, Philadelphia, Pennsylvania.

OPINION: With its approval of the transfer application of your liquor license in June, 2016, the PLCB also approved your request for an interior connection to the grocery store, as is required by the PLCB's Regulations. 40 Pa. Code § 3.52.

However, even where such an interior connection has been approved, section 3.52 also prohibits a licensee from operating another business on the licensed premises without PLCB approval. Id. At this time, no approval by the Board has been given. Therefore, you are not permitted to sell items from the grocery store on the licensed restaurant premises, and without said approval, your restaurant may only sell food that is offered for sale on the licensed restaurant premises, for consumption on the premises or individual portions of such food, as in the manner of “take-out.” Should you wish to obtain Board approval to operate another business on your licensed premises, you may wish to contact the PLCB’s Bureau of Licensing in order to begin the approval process.

Insofar as your inquiry concerns the POS and inventory systems, you must maintain records as required by section 493(12) of the Liquor Code, 47 P.S. § 4-493(12) (restaurant licensees must keep, for a period of two years, truthful and complete records covering the operation of the business, showing the date of all purchases, the prices paid for beverages, name of the vendors, state store receipts, etc.). The Liquor Code and PLCB’s Regulations do not require separate POS systems for food and beverage, provided that the above record-keeping requirements are followed, and the records can be made available upon request by the PLCB or Pennsylvania State Police, Bureau of Liquor Control Enforcement.

Please be advised that, if you apply for and obtain a Wine Expanded Permit (“WEP”), which would allow sales of wine for off-premises consumption (with certain restrictions), such sales of wine-to-go must occur at a specifically designated area of the licensed premises, but other items from the restaurant may be purchased at the same location as the wine sales. The designated wine-to-go register must be staffed at all times by a cashier who is at least eighteen years old and is RAMP-trained. No sales of wine-to-go may occur elsewhere on the licensed premises. A WEP holder must use a transaction scan device to verify the age of anyone who appears to be under thirty-five years old and must comply with all components of RAMP. 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. Finally, section 415(a)(4) of the Liquor Code 47 P.S. § 4-415(a)(4) allows customers to pay for grocery store items on the licensed premises.

The general record-keeping requirements of section 493(12) of the Liquor Code apply to the wine-to-go inventory as well. In addition, the annual renewal fee for a WEP is 2% of the cost of wine purchased from the PLCB for off-premises

consumption. 47 P.S. § 4-415(b). Therefore, records of wine-to-go purchases and sales made under the authority of a WEP must be carefully tracked and records maintained accordingly.

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
Tisha Albert, Director, Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-565