

December 17, 2018

AMENDED OPINION

Aaron Weyman
VIA E-MAIL

Licensing of Exterior Premises

Dear Mr. Weyman:

ISSUE: This is in response to your e-mail dated September 25, 2018, wherein you inquire about the correct steps for hosting an outdoor event. You indicate that you believe you need to have the event contained within a fenced in area and would like verification of the same.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Tussey Food Services, Inc. (“Tussey”) holds Restaurant Liquor License No. R-17363 (LID 32392) for the premises located at Bear Meadow Road, Route 322 East, Boalsburg, Pennsylvania.

OPINION: 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. Section 7.21(b)(2) of the PLCB’s Regulations permits a licensee to extend its license to immediate, abutting, adjacent, and contiguous vacant land. 40 Pa. Code § 7.21(b)(2). A licensee requesting 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. Further, such extension applications must be accompanied by the appropriate plans or surveys setting forth the metes and bounds, the names of abutting streets, and a plotting of the principal licensed premises.

It should be noted that the licensee must have the exclusive right to occupy the outside area in order for it to apply for an extension of its 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 of minors frequenting the premises. 47 P.S. § 4-493(14).

If an extension is not desired or possible, then you could also obtain an off-premises catering permit (“OPCP”) to temporarily license the area in question. 47 P.S. § 4-406(f). However, the event must meet the definition of a “catered function” to obtain an OPCP. A “catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.” 47 P.S. § 1-102.

Regarding your inquiry about barriers, there is no specific requirement that the area covered by the extension of premises be enclosed. However, please note that licensed areas cannot be extended beyond public thoroughfares. See Roberts v. Pennsylvania Liquor Control Bd., 604 A.2d 1152 (Pa. Cmwlth. 1992).

An applicant for extension of the licensed premises must submit with its application a fee of \$220.00. Please also be aware that the licensee must conspicuously post a notice of its application using a placard provided by the PLCB on the outside of the licensed premises for a period of at least **THIRTY** days. 40 Pa. Code §§ 3.12-3.14, 7.22. An extension application can be completed on the PLCB’s online licensing portal, PLCB+, which can be found at www.lcb.pa.gov under the “Licensing” tab.

Please note that a restaurant license permits the sale for consumption off-premises of no more than 192 fluid ounces of malt or brewed beverages in a single sale to one person. 47 P.S. § 4-401. Therefore, a patron could purchase beer-to-go inside of your licensed premises, as long as the purchase complies with section 401 of the Liquor Code, thereafter taking the malt or brewed beverages to an outside area to be consumed, provided there are no local ordinances prohibiting such activity. Additionally, Tussey’s wine expanded permit also permits the sale of up to 3,000ml (3 liters) of wine for off-premises consumption (“wine-to-go”) in a single transaction. 47 P.S. § 4-415(d).

Please do not hesitate to again contact this office should you have further 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

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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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 18-439