

December 28, 2018

Mary Lou Hogan, Esquire
VIA E-MAIL

Re: Gift Baskets

Dear Ms. Hogan:

ISSUE: This is in response to your e-mail dated October 15, 2018, wherein you ask several questions regarding the sale of gift baskets containing malt or brewed beverages. You inquire whether any of the activities outlined constitute a licensee conducting another business on the licensed premises. Each of your scenarios will be addressed below.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Redners Markets, Inc. holds numerous liquor licenses, including Restaurant Liquor License No. R-8113 (LID 92645) for the premises at Whitehall Square, 2180 MacArthur Road, Whitehall, Pennsylvania.

OPINION:

1) Assembling and selling gift baskets containing beer and/or wine in take-out amounts authorized by the Liquor Code, plus food items in single-serve portions of food available both on the licensed premises and in the grocery store in single-serve portions. For example, a gift basket containing no more than 192 ounces of malt or brewed beverages and/or 3000 milliliters of wine, together in a single ring, would be placed in a basket along with single serve packets of chips, pretzels, and other snack food items, including fruits such as oranges, lemons, limes, and apples and sold from the licensed premises.

Licensees are prohibited from conducting another business on the licensed premises without PLCB approval. 40 Pa. Code § 3.52(c). The sale of gift baskets containing products regularly sold at the licensed premises would not be considered conducting another business, assuming the PLCB has approved the sale of said items. Therefore, the sale of food and alcohol, both regularly sold on the licensed premises, can be sold in gift baskets on the licensed premises.

Be advised that if items in the gift basket are discounted, it may be considered an unlawful inducement as the Liquor Code generally prohibits licensees from offering anything of value as an inducement to purchase alcohol, except advertising novelties of nominal value. 47 P.S. § 4-493(24)(i).

2) *Assembling in the adjacent grocery store gift baskets containing grocery store items, and then having the gift basket taken by either the customer or a grocery store employee to the licensed premises, where the customer would select the beer and/or wine they wanted inserted into a sleeve to become part of the gift basket and having the customer pay for both the grocery store items and the beer and/or wine at a Wine Expanded Permit (“WEP”) register located within the licensed premises. Inserting the beer and/or wine into the sleeve would not require disassembling the gift basket prepared in the grocery store or any other unwrapping or rewrapping of the gift basket on the licensed premises.*

As previously stated, licensees are prohibited from conducting another business on the licensed premises without PLCB approval. 40 Pa. Code § 3.52(c). Assuming your client has already received PLCB approval for this operation, 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. Therefore, if your client has received PLCB approval for operating the restaurant and the grocery store, customers would be permitted to pay for grocery items on the licensed premises at the WEP register. However, if such approval has not been received, your client may wish to contact the PLCB’s Bureau of Licensing in order to begin the approval process.

3) *Having a customer select and pay for beer and/or wine in authorized amounts on the licensed premises, then having the customer remove the beer and/or wine from the licensed premises to the adjacent grocery store where those items would become part of a gift basket composed of grocery store items. The items in the gift basket, except for the wine and/or beer, would be paid for in the grocery store and the completed gift basket, including the beer and/or wine, would then be taken from the grocery store by either the customer or an employee of the grocery store. You additionally ask whether a grocery store employee assisting a customer in removing the gift basket containing alcohol would require a transporter-for-hire permit.*

As in the first scenario, if the alcohol is first purchased from the licensed premises and taken to the grocery store where it is placed in a basket with grocery items, and

the customer is only charged in the grocery store for the grocery items, this would not be considered a violation of the Liquor Code or PLCB Regulations.

With regard to a grocery store employee assisting a customer with removing a basket from the premises, a transporter-for-hire permit would not be required in such a scenario, as long as they are not charging a fee to transport it.

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 of Office of Regulatory Affairs
B. L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 18-465