

Mailing Date: October 18, 1996

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October 18, 1996

John F. King, Esquire  
FRIEDMAN & FRIEDMAN, P.C.  
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P. O. Box 984  
Harrisburg, PA 17108

Dear Mr. King:

ISSUE: In your September 30, 1996 letter to this office, you inquired whether section 5.82 of the Board's regulations regarding food concessionaires allows concessionaire employes to carry drinks from the bar to club members along with their meals.

OPINION: Your client, the holder of a club license, wishes to, pursuant to section 5.82 of the Board's regulations, permit a food concession to be operated on the premises. You inquire whether a requirement that neither the concessionaire nor his employes handle or dispense any liquor or malt or brewed beverages merely limits the concessionaire and its employes from being behind the bar or whether it will be necessary for the club to have two employes attend each table, one concessionaire employe to handle the food and one club employe to handle the alcohol. This office has reviewed your proposal. Section 5.82(b) clearly indicates that the concessionaire shall buy, prepare, sell and collect for the food, and receive the profits. Neither the concessionaire nor his employes are permitted to handle or dispense liquor or malt or brewed beverages; and club employes are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages shall be presented to each member served. [40 Pa. Code Section 5.82(b)]. The clear language of this section, particularly the reference to two separate checks (one for alcohol and one for food), indicates that in fact only club employes may bring the alcoholic beverages to the patrons who are consuming food. Please note that this would not necessarily dictate that a club employe and a concessionaire employe must be providing service to all tables; rather, nothing would prohibit the club from having its members go to the bar directly to acquire their drinks.

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,

FRANCIS X. O'BRIEN, JR.  
Chief Counsel

c.c. Pennsylvania State Police  
Bureau of Liquor Control Enforcement  
Refer to: (717) 783-9454  
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LCB Advisory Opinion No. 96-267