

March 11, 1998

Mr. Daniel Stamler, Manager
D'AMICO'S, INC.
t/a Bruno's Restaurant
1108 Philadelphia Street
Indiana, PA 15701

Dear Mr. Stamler:

ISSUE: This is in response to your letter of February 26, 1998, in which you request our opinion concerning the "minors frequenting" clause in section 493(14) of the Liquor Code. Your question is whether, at a table seating three persons, ages twenty-five, twenty-one and twenty, the two older persons may be served alcoholic beverages. Your licensed restaurant's food and nonalcoholic beverage sales are more than seventy percent of the total sales of food and alcoholic beverages.

OPINION: Because the licensed premises' sales of food and nonalcoholic beverages are equal to seventy percent or more of the gross sales of both food and alcoholic beverages, minors are permitted on the premises on the condition that alcoholic beverages may not be served at the table or booth at which the minor is seated, and that only table service of alcoholic beverages or take-out service of beer is permitted in the room wherein the minor is located. [47 P.S. §4-493(14)]. Thus, service of the adult patrons at the same table with a minor would generally be impermissible. An exception to that prohibition, however, allows the adults at the table to be served if the minor is with a parent, guardian, or under proper supervision. "Proper supervision" is defined as ". . . the presence, on that portion of the licensed premises where a minor or minors are present, of one person twenty-five years of age or older for every fifty minors or part thereof who is directly responsible for the care and conduct of such minor or minors while on the licensed premises and in such proximity that the minor or minors are constantly within his sight or hearing. The presence of the licensee or any employe or security officer of the licensee shall not constitute proper supervision." [47 P.S. §4-493(14)].

Thus, if either adult in question is either the minor's parent, guardian, or fits the definition of proper supervision mentioned above, the minor can be seated and served food and nonalcoholic drinks, and the licensee would be permitted to serve alcohol to the adults at the same table. Otherwise, the licensee would not be permitted to serve anyone an alcoholic beverage at the same table.

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

MR. DANIEL STAMLER
March 11, 1998
Page Two

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,

FAITH S. DIEHL
Chief Counsel

c.c. Pennsylvania State Police
Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 98-070