

May 15, 1998

VIA FAX

Benjamin Paul, Esquire
1528 Walnut Street, 5th Floor
Philadelphia, PA 19102

Dear Mr. Paul:

ISSUE: This is in response to your letter of April 16, 1998 in which you request our opinion concerning a private party which your client, Office Lounge, wants to hold at its licensed restaurant on a Sunday. While the restaurant has an amusement permit, it does not have a Sunday sales permit. The bar will be closed during the hours of the party and the thirty people invited will bring their own champagne and wine. The licensee will not sell or serve any alcohol, but may provide ice and glasses to the guests.

OPINION: Unfortunately, the Board cannot approve your client's party. Section 406 of the Liquor Code [47 P.S. §4-406] prohibits the sale of alcohol by licensed restaurants after 2:00 a.m. on Sundays unless the restaurant holds a Sunday sales permit. Since the restaurant does not hold such a permit, it cannot sell alcoholic beverages on a Sunday. Additionally, the Commonwealth Court has interpreted this prohibition to include a situation where other parties would use the premises for the consumption of alcohol. Without a Sunday sales permit, a restaurant licensee may not allow private parties to use the premises for the consumption of alcohol. *Pennsylvania Liquor Control Board v. Mignogna*, 120 Pa. Cmwlth. 405, 548 A.2d 689 (1988); *Pennsylvania Liquor Control Board v. Buffalo Tavern, Inc.*, 118 Pa. Cmwlth. 306, 544 A.2d 1125 (1988). The Court has construed such a situation to be unlawful on the theory that when a licensee permits others to use its premises and knows that alcoholic beverages will be available for consumption, those other persons become the licensee's agents, and thus, the licensee could be cited for a Sunday sales violation. Further, section 493(16) of the Liquor Code prohibits licensees from furnishing, serving or delivering alcoholic beverages at times when the licensee is not authorized to sell such beverages. [47 P.S. §4-493(16)].

Therefore, it would be impermissible for the guests to bring their own alcoholic beverages onto your client's licensed premises on a Sunday. Your client may, of course, provide food and nonalcoholic beverages on Sundays.

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

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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,

FAITH S. DIEHL
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. 98-164