

December 31, 1998

Matthew N. Goldstein, Esquire

GOLDSTEIN, FRIEDBERG & GOLDSTEIN, P.C.

17th Floor, 230 S. Broad Street

Philadelphia, PA 19102

Dear Mr. Goldstein:

ISSUE: In your facsimile dated December 17, 1998 you ask whether a for-profit corporation may qualify for a performing arts facility license. The facility has several thousand seats and is in a township of the first class in Delaware County, a county of the second class A.

OPINION: Section 408.6 of the Pennsylvania Liquor Code, as amended by Act 155 of 1998, effective December 21, 1998, now states 'the Board is authorized to issue licenses to operators of theaters for the performing arts in townships of the first class located in a county of the second class A which are permanently located at a single site and which have seating accommodations for at least two hundred fifty persons except where prohibited by local option....' [47 P.S. Section 4-408.6(a.2)]. Therefore, it may apply under the new provision. Please note that the amendments also permit such performing arts facility licensees to sell during the hours of the performance and up to two hours before scheduled opening and one hour after the scheduled closing of the facility. [47 P.S. Section 4-408.6(g)]. In addition, as the entity you represent is a for-profit corporation, it would not qualify under section 408.3(a.2) of the Liquor Code which applies only to nonprofit corporations. [47 P.S. Section 4-408.3(a.2)].

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

Matthew N. Goldstein, Esq.

December 31, 1998

Page Two

SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL

CHIEF COUNSEL

cc: Pennsylvania State Police-

Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454

FAX: (717) 787-8820

LCB Advisory Opinion No. 98-423