

January 4, 1999

Ronald P. Carnevali, Jr.
SPENCE, CUSTER, SAYLOR, WOLFE & ROSE
United States National Bank Building
P.O. Box 280
Johnstown, PA 15907-0280

Dear Mr. Carnevali:

ISSUE: In your fax dated December 3, 1998, received in this office December 8, 1998 you ask whether a nonprofit organization conducting a folk festival and holding a special occasion permit may advertise the sponsorship of a beer manufacturer on the permitted site of the festival at a location which is within 300 feet of a church and a day care center.

OPINION: As we discussed previously by telephone, the advertising by banners or signs containing beer logos or other advertisement of alcohol beverages within 300 feet of a church, school or playground is prohibited. [47 P.S. §4-498(e)(3)]. The 300 feet between the premises holding a special occasion permit and the church or school would be measured by a direct line from the nearest point of the church or school property used by those institutions to the nearest licensed or permitted part of the property on which the festival is conducted.

As discussed, the only exception in the statute to the rule prohibiting alcoholic beverage advertising within 300 feet of these locations would be that signs or other advertising matter inside the premises of the permittee, which is not placed in windows or visible from the outside of the building, would be permissible. In addition, a church holding a special occasion permit could also display such advertising inside its building if covered by the permit. The Board has no authority to make any other exceptions to these provisions. If generic language not falling within the definition of "advertisement" in section 498 is used in a sign, it would be permitted.

The Commonwealth Court has held that all day care centers are not necessarily schools under the Liquor Code. *K & K Enterprises, Inc. v. P.L.C.B.*, 602 A.2d 476, (Pa. Cmwlth. 1992). Depending on the center's functions, section 498 may not apply to its location.

Should you have further questions, please contact our office.

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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,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police
Senator John N. Wozniak

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

LCB Advisory Opinion No. 99-004