

April 7, 1999

Joseph J. Zelinsky
Seltzer Hose Company
P.O. Box 270
Seltzer, PA 17974

RE: Sales to Nonmembers and Catered Events

Dear Mr. Zelinsky:

ISSUE: In your letter dated March 10, 1999, you ask several questions about operating under a catering club license, Seltzer Hose Company, and the lawfulness of certain proposed policies and procedures. Your specific questions relate to serving alcoholic beverages to nonmembers on days when the club offers spaghetti dinners or dance events, and whether the answers to your questions change under the following circumstances: if the customers are not active or social members; if the tickets to the event are sold by the club at least 24 hours in advance; if tickets may be sold at the door; and if the event is open to the general public versus being open to club members and their guests only.

You next ask for clarification of the phrase 'at least two years' with respect to record keeping requirements and the potential liability of a catering club licensee for failing to maintain said records. You also ask whether the Board has policies with respect to catering club licensees keeping locked or unlocked entrances to its premises.

Finally, you seek general guidance and information concerning procedures that should be in effect at the club, given the description of the facility, to ensure that the above-mentioned events, and the potential sale of beer and liquor, are conducted lawfully.

OPINION: Generally, club licensees may only sell alcoholic beverages to members of the club [47 P.S. Section 4-406(a)], although members of the club may purchase alcoholic beverages for nonmember guests who will then consume the alcohol. Section 102 of the Liquor Code requires that a club must '...admit members by written application, investigation and ballot, and charge and collect dues for elected members, and maintain such records as the Board shall from time to time prescribe....' [47 P.S. Section 1-102]. A club licensee must also adhere strictly to its club constitution and bylaws [40 Pa. Code Section 5.81].

Catering club licensees who cater events for groups of nonmembers may sell alcohol to the attendees of the event. 'Catering' has been defined in the Board's regulations as 'furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises or brought on to the premises already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement, made at least 24 hours in advance of the time for private meetings or functions, such as dances, card parties, banquets and the like; and which is paid for by the nonmembers. [40 Pa. Code Section 5.83(a)]. Since the club is sponsoring the proposed events and it is not catering the events for groups of nonmembers, it would not be permitted to sell alcoholic beverages to nonmembers during these events. In addition, since this is not a catered event the club could sell tickets at the door on the day of the event. However, nothing prohibits the club from offering spaghetti dinners or dance events to the general public so long as no alcoholic beverages are sold to nonmembers.

With respect to your question regarding record retention periods of 'at least two years' for retail licensees, please be advised that section 493(12) of the Liquor Code [47 P.S. Section 4-493(12)] requires catering club licensees to keep on the licensed premises for a period of at least two years complete and truthful records covering the operations of the licensed premises, particularly showing the date of all purchases of liquor and malt or brewed beverages, the actual price paid therefor, and the name of the vendor, including state store receipts.

You also question when the clock starts for purposes of determining the two year period. Please be advised that the Liquor Code and Board's regulations contemplate that records be maintained for a period of at least two years from the time such a record would come into existence, unless a specific provision of the Board's regulations provides otherwise. For example, if a catered event was arranged on March 19, 1999 such record would be required to be maintained through March 19, 2001. The second part of your question addresses the liability of a catering club licensee for failing to maintain proper records. Briefly stated, section 471 of the Liquor Code [47 P.S. Section 4-471] provides for fines of not less than \$50.00 nor more than \$1,000.00 or suspension or revocation of a liquor license or both for this type of a violation of the Liquor Code or the Board's regulations. The Board's regulations also require that a record be maintained showing the date and time the catering arrangements were made, the name of the person or organization making the arrangements and the approximate number of persons to be accommodated [40 Pa. Code Section 5.83(b)].

Next, please note that there is nothing in the Liquor Code or the Board's regulations that regulates the type of entrance to a club's licensed premises or whether those entrances must be locked in a certain manner. Unless the club's bylaws contain specific rules concerning door entrances, the club may use whatever method it deems appropriate to protect the security of the alcohol contained on the licensed premises. The danger to the club license exists when persons, whether members or not, can enter the building freely and gain access to the alcohol thus giving rise to potential violations such as underage drinking, sales to nonmembers, sales to visibly intoxicated persons, after hour sales and so forth. Therefore, it is suggested that the club provide some sort of restricted access to the club house by whatever method the club chooses.

Please note, however, that section 5.84 of the Board's regulations prohibits a licensed club from maintaining or permitting barricades to be maintained in the entrance or inside doorways in its club house. Also, section 5.85 of the regulations prohibits the club from denying immediate entrance to authorized representatives of the Board who identify themselves as such. [40 Pa. Code Sections 5.84; 5.85].

Lastly, you ask for general guidance concerning procedures at Seltzer Hose Company. There are numerous provisions throughout the Liquor Code and the Board's regulations with which clubs must comply. Therefore, you may want to consider purchasing the Liquor Code and the Board's regulations. Please find enclosed information regarding how to obtain such copies. In addition, enclosed are copies of several important provisions of the liquor laws affecting licensed clubs. Specifically, licensed clubs must meet the definition of 'club' as set forth in section 102 of the Liquor Code. [47 P.S. Section 1-102]. Also, section 406 of the Liquor Code provides the restrictions regarding the sales of alcoholic beverages by licensed clubs. [47 P.S. Section 4-406]. In addition, Liquor Code section 493 gives a list of unlawful activities for all liquor licensees. [47 P.S. Section 4-493]. Furthermore, sections 5.71 through 5.91 of the Board's regulations includes specific requirements with respect to club records and premises. [40 Pa. Code Sections 5.71-5.91]. Finally, please find enclosed an updated copy of the information booklet referenced in your letter.

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

Enclosures

cc: Bureau of Liquor Control Enforcement,

Pennsylvania State Police
Robert P. Kaskiel

