

July 12, 1999

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Joseph M. Omastu
401 Woodvale Ave
Johnstown, PA 15901

Dear Mr. Omastu:

ISSUE: This is in response to your letter of June 23, 1999 to this office in which you write on behalf of the officers of the Woodvale Avenue Olympic Club. You ask about the distance laws between a small children's playground and a bar or club serving alcohol. Your club is the holder of club liquor license No. C-4044.

OPINION: There is no liquor law that requires a licensed establishment (one that serves alcohol) to be a certain distance from a playground. There is a rule, however, that allows a playground's officials to protest the granting of a liquor license to an establishment when a public playground is located within three hundred feet. [47 P.S. Section 4-404]. The same rule applies when a church, hospital, charitable institution, or school is within three hundred feet of a proposed licensed premises.

Further, the Pennsylvania Liquor Control Board is empowered to refuse the license application of someone whose premises would be within three hundred feet of these restrictive institutions. That power is discretionary, meaning that the Board may, but does not have to, refuse the license application. In the case of a playground, measurements are taken in a straight line from the part of the playground nearest to the proposed licensed premises to the part of the proposed licensed premises that is closest to the playground, regardless of any intervening land, water, buildings and so on. [40 Pa. Code Sections 3.22 and 3.23]. An investigator from the Board's Bureau of Licensing would take the measurements at the time of his or her investigation of the application for a liquor license.

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

LCB Advisory Opinion No. 99-244