

July 16, 1999

Telephone: 717-783-9454
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Elwood Marcks, Jr.
450 Business Park Lane
Allentown, PA 18103

Dear Mr. Marcks:

ISSUE: This office is in receipt of your recent letter to this office in which you inquire whether an eating place licensee is permitted to sell food items on its premises that contain liquor, such as Cherries Jubilee, Steak Diane and Rum Cake. It is your intention to make or purchase these items off of your licensed premises.

OPINION: Section 491(1) of the Liquor Code prohibits the sale or offering to sell, absent a license, any liquor within the Commonwealth. [47 P.S. Section 4-491(1)]. Liquor is defined as 'any alcoholic, spiritous, vinous, fermented or otherwise alcoholic beverage, or combination of liquors or mixed liquor a part of which a spiritous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures....which contain more than one-half of one percent of alcohol by volume.' [47 P.S. Section 1-102]. Under the Liquor Code, holders of eating place licenses may engage in the retail sales of malt or brewed beverages for consumption on the premises, with the privilege of selling malt or brewed beverages in quantities not in excess of 192 fluid ounces in a single sale to one person, to be carried from the premises by the purchaser thereof. [47 P.S. Section 1-102]. Despite the fact that you are not licensed to sell liquor on your premises, you are permitted to sell foods flavored with liquor under certain circumstances.

Section 305.1 of the Liquor Code prohibits the sale of confectionery containing alcohol or liquor within the Commonwealth of Pennsylvania. [47 P.S. Section 3-305.1(b)]. Unfortunately, 'confectionery' is not defined in the Liquor Code nor is there any case law interpreting the section. Dictionary examples of confections include candy, preserves and sweet and meats. However, the definition could theoretically be broad enough to include anything prepared with sweeteners. In light of the dictionary definitions, it is the opinion of this office that a baked good, like a rum cake, which is prepared with an alcoholic beverage, would not be considered confectionery under section 305.1, especially since any alcohol is likely to evaporate once the food item is baked. Therefore, it would be permissible for you to sell rum cake and other baked goods which are prepared with or contain liquor or alcohol.

With regard to Cherries Jubilee and Steak Diane which you propose to sell, if they are not considered confectionery, they may be sold without a liquor license only if the alcohol or liquor content of those items does not exceed one-half of one percent of alcohol by volume. Because these items are typically cooked with alcohol or are ignited while served, thereby burning off the alcohol used to prepare them, it is not likely that the alcohol contained in those dishes at the time they are served to your customers exceeds one-half percent of alcohol by volume. Therefore, you would be permitted to serve them on your licensed premises.

Please note that section 492(13) of the Liquor Code prohibits eating place retail dispenser, or E, licensees from possessing or storing liquor or alcohol on their licensed premises, or in any place contiguous or adjacent thereto accessible to the public or used in connection with the operation of the licensed premises. [47 P.S. Section 4-492(13)]. Therefore, the items you propose to sell must be made or prepared off of your licensed premises.

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. 99-249