

July 22, 1999

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Mr. William T. Habacivch
General Manager/Owner
Appalachian Brewing Co., Inc.
50 N. Cameron St.
Harrisburg, PA 17101

Dear Mr. Habacivch:

ISSUE: This is in response to your letter of June 29, 1999 in which you ask about obtaining permission to hold a jazz festival in late September or early October on your property. Your brewery holds both a manufacturer's license and a restaurant liquor license. The festival would be held in the rear parking lot, an area that is enclosed, lighted, and fenced, but is not covered by either of your licenses. Beer and wine would be served along with food provided by your brewery. Your brewery would also provide security for the event.

OPINION: You have two possible options. Under section 7.21(b) of the Board's Regulations, a licensee may request an extension of premises to include either the abutting and adjacent sidewalk or the immediate, abutting, adjacent and contiguous vacant land. [40 Pa. Code Section 7.21(b)]. Since it appears that your event would more accurately fall under section 7.21(b)(2), which allows licensees to have the immediate, abutting, adjacent, and contiguous vacant land licensed, there would be no prohibition to the establishment of a service bar or other facility to serve alcoholic beverages if an extension is approved for the area. Please note, however, that as a retail licensee, you can only sell up to 192 fluid ounces of malt or brewed beverages in a single sale to one person for off-premises consumption [47 P.S. Section 4-407]. While selling liquor or wine on licensed premises is permissible, it is strongly recommended that any service on the outside of the premises be limited to malt or brewed beverages only or you will run the risk of citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, for selling liquor or wine for off-premises consumption should a patron leave possessing same. Also remember that minors may not be allowed to frequent the licensed premises without proper supervision.

To obtain an extension of premises permit, however, the land you wish to license must be contiguous, with no intervening areas or thoroughfares not within your control. Since it appears from your attached map that the Paxton Creek separates your current licensed premises from your unlicensed back lot, you may not qualify for an extension of premises, unless there is some bridge or access over the creek that is under your exclusive control.

Equally problematic is the fact that you intend to hold a jazz festival on the lot, which presumably will entail live, amplified music. Section 5.32 of the Board's Regulations [40 Pa. Code Section 5.32] presents two deterrents to this possibility. Subsection 5.32(a) makes it unlawful for a licensee to use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment can be heard on the outside of the premises. Since your music is being played outdoors, this could be a problem and result in citation. Also subsection 5.32(b) prohibits a licensee from maintaining on the licensed premises a platform or stage level with or elevated above the floor and used by musicians or entertainers, if the platform or stage or entertainment can be seen from outside the licensed premises. Since your drawing indicates a stage from which the musicians would presumably play, this could also present a problem if the fence does not entirely prevent them or the stage from being seen from the outside.

The other option is to have the festival on your unlicensed lot. This would eliminate the problems with section 5.32 for the most part. Even though the lot is unlicensed, you could still sell beer inside your licensed premises to go, and the patrons could walk it back to the lot. Sales of malt or brewed beverages in glass, or plastic containers, or bottles, would all be permissible, as long as you comply with the limitations on amount mentioned earlier. No wine or other alcoholic beverages could be sold for off-premises consumption, however. You also might want to check with the City of Harrisburg concerning any open container ordinances that might affect your situation.

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. 99-272