



VIEW FROM THE BAR

by Marc Reisman, Esq.



RESTAURANT LIQUOR LICENSEES MUST PROVIDE FOOD - REALLY!

Often I have been asked by clients whether they can obtain a “bar only” liquor license under which they may sell alcoholic beverages to the public without having to provide food. Similarly, clients who already have licenses occasionally ask me if it is permissible for them to stop serving food. I tell them that, generally speaking, the answer is no. Often, the next question is, why do they have to serve food when the place down the street hasn’t been serving any for years? My answer is that such activity by others isn’t a defense if the client gets caught and cited by the State Police.

The “place down the street” my clients refer to is most often a “restaurant liquor” or R licensee. Not surprisingly, an R licensee is required by the Pennsylvania Liquor Code to provide food to its patrons. The term “restaurant” has a special definition in the Liquor Code and licensees must conform their operation to this definition or risk being cited, and at worst, suffer a suspension of license until they comply.

Specifically, the Liquor Code’s definition of “restaurant” requires, among other things, that the premises be “habitually and principally used for the purpose of providing food to the public.”

If a restaurant liquor licensee is unable to serve food upon request, and/or fails to maintain sufficient food at the premises, the citation typically charges that the premises is not a bona fide restaurant as defined in the Liquor Code. If an Administrative Law

Judge (ALJ) agrees, the licensee risks losing the ability to serve alcoholic beverages until complying with the requirement that it be a restaurant.

The question of what constitutes sufficient food to satisfy the Liquor Code’s definition of “restaurant” has been the subject of a number of ALJ decisions. Certainly, more than soda and snack food is required. Likewise, the question of whether a licensee is required to be prepared to serve food at all hours during which it is open for business has been the subject of ALJ decisions. And, it has been held to be permissible for a licensee to have food available which is prepared at another location. I recommend you contact liquor counsel if you need advice in these areas.

(This column is brought to you as a public service by Marc Reisman, a partner in the law firm of Gelman & Reisman. If you have an issue you would like to see addressed, or if you would like a reprint of a previous column, write to him at 429 4th Avenue, Suite 1701, Pittsburgh, PA 15219, or call 1-800-883-1LAW. This column is intended for informational purposes only - consult Mr. Reisman for legal advice specific to your situation.)

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