

**BEFORE THE
OHIO STAY AT HOME ORDER DISPUTE RESOLUTION COMMISSION**

In the Matter of Dispute Resolution

Request Number OH071, OH072 & OH134

**DISPUTE RESOLUTION COMMISSION
ADVISORY OPINION AND RECOMMENDATION**

Summary

1. The Dispute Resolution Commission recommends that the Mahoning and Richland County health departments properly determined that Gabe’s is an essential business based on the information provided, if it adheres to the framework provided in paragraph 7 below.

Background

2. On or about April 13, 2020, Summit County Public Health and Portage County Public Health submitted a dispute resolution request related to the business operation of Gabriel Brothers, Inc. dba Gabe’s (hereafter, “Gabe’s”) to the Dispute Resolution Commission (“Commission”) pursuant to paragraph 23 of the Amended Stay at Home Order (“Order”) issued on April 2, 2020, by the Director of the Ohio Department of Health.¹ On April 20, 2020, Blake Stephens submitted a dispute resolution request on behalf of Gabe’s. The dispute resolution requests were assigned numbers OH071, OH072 and OH134.

3. Paragraph 23 of the Order authorized the Director to appoint the members of the Commission and delegated authority to the Commission to facilitate the resolution of disputes regarding what is or is not an essential business in circumstances where a conflict between decisions or actions by local health authorities is demonstrated.

4. On April 6, 2020, the Director of the Ohio Department of Health appointed Lydia Mihalik, Director of the Ohio Development Services Agency, Sheryl Maxfield, Director of the Ohio Department of Commerce and Sam Randazzo, Chair of the Public Utilities Commission of Ohio to the Commission.

¹ The Amended Stay at Home Order can be found at:
https://content.govdelivery.com/attachments/OHOOD/2020/04/02/file_attachments/1418062/Signed%20Amended%20Director%27s%20Stay%20At%20Home%20Order.pdf

5. On April 21, 2020, the Commission met to consider and address the verified dispute resolution requests referenced above along with information provided by the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses and the relief requested by the entities submitting the requests referenced above.

6. Based on the information provided by the local health authorities and the relief requested by the entities submitting the requests referenced above, the Commission hereby issues its opinion as follows. Pursuant to paragraph 23 of the Order, the decision of the Commission shall be final.

Advisory Opinion and Recommendation

7. It is the opinion of the Commission that the Mahoning, Richland and other county health departments properly interpreted the Order in determining that Gabe's is an essential business, if it conforms to the requirements outlined here. This business offers products that are both essential and nonessential, as outlined in the Order. Specifically, paragraph 12.b. includes in the definition of "essential business" those engaged in the retail sale of "dry goods," "pet supplies," non-alcoholic beverages," "other household consumer products (such as cleaning and personal care products)," and "products necessary to maintaining the safety, sanitation, and essential operation of residences." In its request, Gabe's states that it sells dry goods, pet supplies, non-alcoholic beverages, masks, gloves, disinfecting wipes, toilet paper, toothpaste, deodorant, medical items, cleaning supplies, bottled water, and other personal hygiene products. In at least one county, Gabe's offers enough food to require a retail food establishment license. The Commission finds that this business is essential and may continue to operate and maintain its essential lines of business and, to a limited extent, non-essential lines of business provided that: (1) all non-essential activities are strictly incidental to essential lines of business; and (2) the business is being conducted in accordance with the Order's requirements that attach to businesses engaged in essential functions. If the sale of non-essential products becomes more than incidental for the business, it loses its essential status. A business may not use the form of essential lines of business as justification for receiving essential business status when, in substance, the business' primary line of business activity is non-essential. Therefore, Gabe's may be considered an essential business provided that its primary line of business is limited to the sale of the essential goods listed in its request: dry goods, pet supplies, non-alcoholic beverages, masks, gloves, disinfecting wipes, toilet paper, toothpaste, deodorant, medical items, cleaning supplies, bottled water, and other personal hygiene products.

8. It is the recommendation of the Commission that the Ohio Department of Health take such action as may be necessary to advise city and county health departments whose interpretation of the Order conflicts with the opinion set forth above in paragraph 7 to conform their enforcement of the Order to such above opinion.

9. It is the recommendation of the Commission that this advisory opinion and recommendation be promptly provided to the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses, provided to the entities submitting the requests referenced above and published through a public posting at the Ohio Department of Health's website.

COMMISSIONERS:

Approving:

Lydia Mihalik

Sheryl Maxfield

Sam Randazzo

Issuance Date and Time April 21, 2020 at 4:00PM

Effective Date and Time² April 23, 2020 at 4:00PM

² Assumes that the Advisory Opinion and Recommendation is not suspended, altered or modified by the Director of the Ohio Department of Health or the Director's designee.