

June 10, 2005

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**RE: J.C. Melrose Country Club**

Dear Mr. Acevedo:

ISSUE: Your e-mail of May 23, 2005 asks several questions with respect to the proposed method of operation for Melrose Country Club. Melrose Country Club holds Catering Club Liquor License No. CC-59 (LID No. 2832).

Your letter indicates that a catering club license was issued under which the club operated as a private, non-profit club. An asset purchase agreement has been reached with a new owner that intends to operate on a for-profit basis. The new owner will be a corporation that will operate the golf course and restaurant facilities. The existing members will be entitled to use the golf course and other facilities without any ownership interest for a period of two (2) years. The new owner plans to operate the restaurant facility for the accommodation of the public. A banquet operation may precede the initiation of restaurant operations. The owner of the golf course may operate the restaurant or may choose to rent or "outsource" its operation to a different management and operating entity. Ultimately, there may be two (2) separate banquet facilities.

Additionally, it is planned to offer the sale of liquor and malt or brewed beverages on the golf course by using a beverage cart. It is intended to have a "halfway house" on the golf course as a separate service area for the service of liquor or malt or brewed beverages. In connection with these plans, you have raised the following questions: 1) Does this plan require any license other than a privately-owned public golf course restaurant liquor license? 2) Does a change in management or outsourcing of the restaurant operation and/or banquet facilities require a transfer or new license application? 3) Would the planned activities be authorized within the scope of the original license application or would an expansion of the request be required? 4) Does operation of the banquet facility require a separate license in that it is planned to operate independently of the restaurant? 5) Would operation of the second banquet facility require a second license? 6) Would sales of liquor and malt or brewed beverages on Sunday require any additional permit or license? 7) Is there a way to expedite the application process because your client is experiencing a financial loss while the application is pending? You have also asked if there is a limited or interim means to operate pending transfer of the license.

OPINION: As to your first question, a privately-owned public golf course restaurant liquor license (“PGR license”) permits the sale of liquor and malt or brewed beverages between 7:00 a.m. and 2:00 a.m. for consumption on the premises, but no sales on Sunday unless a Sunday sales permit is held. It also permits the sale of malt or brewed beverages to a person for consumption off the licensed premises if not exceeding one hundred ninety-two (192) fluid ounces in a single sale. Section 406(e) of the Liquor Code allows the holder of a restaurant or club license located on a golf course to sell, furnish, or give alcoholic beverages on unlicensed portions of the golf course as long as the alcoholic beverages remain on the golf course, restaurant or club premises. [47 P.S. § 4-406(e)]. A golf course is defined in section 102 of the Liquor Code as “a course having a minimum of nine holes and a total length of 2,500 yards.” [47 P.S. § 1-102].

Therefore, the PGR license would permit sale of alcoholic beverages on the golf course using a beverage cart. Please note that service of alcoholic beverages at the halfway house may be permissible under 406(e); otherwise, it may require an application for a secondary service area. Section 406.1 of the Liquor Code authorizes any restaurant, hotel, club, municipal golf course liquor licensee or manufacturer of malt or brewed beverages to apply for a secondary service area by extending the licensed premises to include one (1) additional permanent structure with dimensions of at least one hundred seventy-five (175) square feet, enclosed on three (3) sides and having adequate seating. The secondary service area must be located on a property having a minimum area of one (1) acre and must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare. The original licensed premises and secondary service area must be located on the same tract of land. There is no requirement that the secondary service area be physically connected to the original licensed premises. Additionally, there is no requirement that the secondary service area be located in the same municipality as the original licensed premises, provided that the Board shall not approve a secondary service area if that secondary service area is located in any municipality where the granting of liquor licenses has been prohibited by local option. Accordingly, if the halfway house meets the foregoing criteria, it may be licensed by applying for approval of the secondary service through extension of the license.

If the restaurant and banquet facilities are subject to the same license, and are all part of the same licensed premises, no additional licenses would be necessary to operate a banquet facility independent of the restaurant. In order to be licensed, both the restaurant and the banquet facilities would have to meet the definition of “restaurant” found in section 102 of the Liquor Code that states that a restaurant shall mean a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred (400) square feet, equipped with tables and chairs, including bar seats, accommodating at least thirty (30) persons at one (1) time. If the second banquet facility is not within the same building that is licensed for the first banquet/restaurant premises, it could not operate without its own license.

With respect to your questions regarding operation of the restaurant and/or banquet facilities by an entity other than the licensee, be advised that licenses may only be issued to the licensee and no other person is to be pecuniarily interested in the license. [47 P.S. § 4-404]. Therefore, licenses may not be leased to third parties and only the licensee may have financial and operational control of the licensed establishment.

The Board has traditionally permitted management companies to operate licensed premises on behalf of licensees, provided that said companies do not have an unlawful pecuniary interest in the license. A pecuniary interest has been defined as substantial control of the licensed business, evidenced by participation in profits, assumption of liability, decision-making authority in purchasing or other elements of ownership. Appeal of E-J Westside Inn, Corp., 449 A.2d 93 (Pa. Cmwlth. 1982). Section 102 of the Liquor Code defines “management company” as “any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises.” [47 P.S. § 1-102]. Agreements between the licensees and management companies are reviewed by the Board’s Bureau of Licensing on a case-by-case basis to ensure that no unlawful pecuniary interest exists in such agreements. In accordance with this standard, the licensee must be the one that makes fundamental operating decisions regarding the licensed premises. If the licensee would prefer to have the management company have a greater scope of autonomy, it may form a joint venture with the management company and the license may be transferred to the joint venture so that both the licensee and the management company are the named licensee and therefore, responsible for the operation of the licensed premises and any violations of the Liquor Code or the Board’s Regulations.

Sales of liquor or malt or brewed beverages on Sunday would not be permitted without a Sunday sales permit. Section 406(a)(3) of the Liquor Code permits restaurant liquor licensees whose sales of food and non-alcoholic beverages are equal to thirty percent (30%) or more of the combined gross sales of both food and alcoholic beverages to sell liquor and malt or brewed beverages between the hours of 11:00 a.m. on Sunday and 2:00 a.m. on Monday upon the purchase of a special permit from the Board. [47 P.S. § 4-406(a)(3)]. In order to obtain a Sunday sales permit, the licensee must submit a completed application (PLCB-318) along with the three hundred dollar (\$300.00) fee to the Board’s Bureau of Licensing. The application can be downloaded from the Board’s website at <http://www.lcb.state.pa.us/Licensing/lic-process-Special-Permits.asp>.

Finally, the application process may require some months to complete. Prior to obtaining the issuance of the license, there is no temporary or interim license that would permit limited operations.

If further information would be helpful, please feel free to call this office.

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: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
Bureau of Licensing

LCB Advisory Opinion No. 05-278