

September 2, 2005

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Barry Goldstein, Esquire
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RE: Intermunicipal Transfer of License in Safekeeping

Dear Mr. Goldstein:

ISSUE: Your letter of August 9, 2005 states that you represent GMR Restaurants of Pennsylvania, Inc., holder of approximately seventy (70) restaurant liquor licenses in Pennsylvania. Your client desires to transfer a license currently being held in safekeeping in Falls Township, Bucks County, and which will go out of existence on February 7, 2006, to a new location in Middletown Township, Bucks County. You have applied to Middletown Township for an intermunicipal transfer and have had two (2) hearings to date, but have not received a final decision. You inquire:

1. If an application for the transfer of a license is filed on a prior approval basis to a different location, is the three (3)-year statute tolled?
2. If the transfer is approved prior to February 7, 2006 or after February 7, 2006, does your client get an additional six (6) months to construct, and does the three (3)-year statute start to run from the date of approval?
3. May your client request extensions of the six (6)-month period if well-founded, and for what time period can the extensions be permitted?

OPINION: Act 212 of 2002 added section 474.1 to the Liquor Code. [47 P.S. § 4-474.1]. Section 474.1(b) states that licenses may be held in safekeeping for a period not to exceed three (3) consecutive years. [47 P.S. § 4-474.1(b)]. A license placed in safekeeping prior to the effective date of Act 212 of 2002 is deemed to have been placed in safekeeping on the effective date of the Act for purposes of section 474.1. [47 P.S. § 4-474.1(e)]. The effective date of Act 212 of 2002 was February 7, 2003. Therefore, licenses held in safekeeping on and before that date will be revoked pursuant to section 474.1 as of February 7, 2006. However, section 474.1(b) further states, “Any license remaining in safekeeping for more than three (3) consecutive years shall be immediately revoked by the Bureau of Licensing **unless a transfer application or request for reissue from safekeeping has been filed prior to the expiration of the three-year period.**” [47 P.S. § 4-474.1(b)] (emphasis added). Therefore, in response to your first question, if an application for the transfer of a license held in safekeeping is filed prior to February 7, 2006, the filing thereof will serve to stay the revocation of

the license during the pendency of the application, regardless of whether the application is filed on a prior approval basis.

If a transfer application were approved on a prior approval basis, the Board may require that the necessary alterations or construction or conformity to definition be completed within six (6) months from the date of approval of the transfer. [47 P.S. § 4-403(a)]. The transfer of the license on a prior approval basis would require that the license be placed into safekeeping as of the date of approval of the transfer. [47 P.S. § 4-403(a), 47 P.S. § 4-474(a)]. Therefore, in response to your second question, if the transfer application that was filed prior to the expiration of the three (3)-year safekeeping period is approved prior to February 7, 2006 or after February 7, 2006, your client would get an additional six (6) months to construct, and the three (3)-year statute starts to run from the date of approval.

Where a transfer has been approved on a prior approval basis, failure to complete the premises within six (6) months shall be cause for revocation of the license, except in the case of death of the licensee prior to full compliance or unless full compliance is impossible for reasons beyond the licensee's control, in which event, the license may be transferred by the Board. [47 P.S. § 4-403(a)]. Nothing in the Liquor Code authorizes the Board to grant extensions of time for the licensee to complete construction.

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. 05-389