

August 15, 2007

Telephone: (717) 783-9454

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Sansos Italian Pizza, Inc.

t/a Sansos

RE: Transferring Licenses in Safekeeping

Dear Sir or Madam:

ISSUE: This is in response to your e-mail inquiry to this office dated July 31, 2007 in which you request guidance in a particular licensing situation. Pennsylvania Liquor Control Board ("Board") records indicate that Sansos Italian Pizza, Inc. t/a Sansos, holds Restaurant Liquor License No. R-7129 (LID 12560) for the premises located at 3113 Route 119S, Homer City, Pennsylvania 15748. You advise that in February of 2006, you purchased a license which had been held in safekeeping. Board records indicate that Sansos Italian Pizza, Inc. t/a Sansos, also holds Restaurant Liquor License No. R-5927 (LID 55870), which is currently held in safekeeping. For the purpose of this response, it is assumed that this is the license at issue. You advise that the transfer of the license to you was approved under certain conditions, including, among other things:

The transferred license, which will now be issued in the name of the licensee for the premises listed in the application, shall be held in safekeeping by the Board pending completion of the premises and verification of full compliance with all statutory requirements.

Completion of the premises and compliance with the requirements shall be accomplished within six (6) months from this date. Failure to comply with these requirements shall be considered cause for revocation of the license.

You advise that you have experienced several infrastructural setbacks during the construction of your building. You further advise that although everything has been resolved, you were required to keep the Board apprised of the status of the construction in order to obtain extensions of the six (6) month period. You were wondering whether there have been any recent changes in the Liquor Code or the Board's Regulations which would allow the purchase of a license in safekeeping with the buyer's sole intent, as you state, to hold it for purely speculative purposes. If so, you ask whether such changes affect the time limitation under which a license can be held in safekeeping.

You note that a license in Center Township, Indiana County, which trades as Smokin' Joe's, is currently in safekeeping. You have heard from various sources that this license is in the process of being sold and/or transferred to a new licensee, and that the purchaser has intentions of selling the license under the speculation that Pennsylvania law regarding the sale of malt and brewed beverages may undergo changes. You want to know whether the license can be legally transferred and then returned to safekeeping.

OPINION: As you know, a liquor license can be transferred on a "prior approval" basis. Under "prior approval," the Board can review an application on the basis of plans submitted. If approved, the applicant receives an additional six (6) months to complete the building. No further transfer of the license either to a new location or to a new owner can occur until the building is completed and the licensee is operating, unless full compliance is not possible for reasons beyond the licensee's control. [47 P.S. § 4-403(a)].

Further, even if circumstances beyond an applicant's control make it impossible to complete the plans within six (6) months, an applicant would have no more than three (3) years from the date of the approval of the transfer to remove the license from safekeeping and operate the licensed premises, unless an application to extend the safekeeping period is filed along with applicable fees. Be advised that before again transferring the license, the applicant would be required to have been operational as a licensed premises at some time after acquiring the license. [47 P.S. § 4-403(a)]. An applicant is not permitted to transfer a license for the purpose of placing the license into safekeeping for future transfer without operating. [47 P.S. § 4-403(a)]. While in safekeeping, the license must be timely validated and renewed and all fees paid.

As noted above, section 474.1(b) of the Liquor Code provides that the Board may hold a restaurant liquor license ("R") license in safekeeping for a period not to exceed three (3) consecutive years, and that any license remaining in safekeeping for more than three (3) consecutive years shall be immediately revoked by Licensing, unless a transfer application or request for reissue from safekeeping has been filed prior to the expiration of the three (3)-year period. [47 P.S. § 4-474.1(b) (emphasis added)].

Liquor Code section 474.1(g)(1) provides that a licensee may apply in writing to the Board to allow the license to remain in safekeeping for an additional year beyond the three (3)-year period. [47 P.S. § 4-474.1(g)(1)]. The written request must be accompanied by a fee of two thousand five hundred dollars (\$2,500.00) for licenses placed in safekeeping from counties of the fifth through eighth classes. [Id.].

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With respect to your inquiry, please be advised that there has been no change in the law regarding the above matters. Specifically, the current state of the law does not allow for the speculative purchase of a liquor license. An applicant is not permitted to transfer a license for the purpose of placing the license into safekeeping for future transfer without operating. [47 P.S. § 4-403(a)]. If the license was acquired on a prior approval basis, as noted above, no further transfer of the license either to a new location or to a new owner can occur until the building is completed and the licensee is operating, unless full compliance is not possible for reasons beyond the licensee's control. [Id.].

Should you have any further questions and/or concerns regarding these matters, please feel free to contact this office again.

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
Jerry W. Waters, Sr., Director, Bureau of Licensing

Advisory Opinion No. 07-300

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