

August 14, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

Wendy Parides and Lynda Mussi
The Piedmont Food Company

E: Leasing Hotel License to a Third Party

Dear Ms. Parides and Ms. Mussi:

ISSUE: This is in response to your July 18, 2013 e-mail in which you state that you have been approached by a restaurant group expressing interest in leasing your restaurant as well as your liquor license. You hold a hotel liquor license and you note that the motel is separate from the restaurant. You ask how you could lawfully undertake such a venture, while continuing with your “smoker friendly bar” and take out beer business.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that The Piedmont Food Company holds Hotel Liquor License No. H-6099 (LID 58544) for premises located at 1405 South Atherton Street in State College, Pennsylvania.

OPINION: The Liquor Code prohibits the leasing or assignment of a license. [47 P.S. § 4-468(a)]. Further, unlicensed third parties may not have an unlawful pecuniary interest in a license. [47 P.S. § 4-404]. Section 1.1 of the Board’s Regulations defines “pecuniary interest” as:

An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business or when control is exercised by one or more of the following:

- i. Employing a majority of the employees of the licensee.
- ii. Independently making day-to-day decisions about the operation of the business.
- iii. Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1; see also Appeal of E-J Westside Inn Corp., 68 Pa. Cmwlth. 323, 449 A.2d 93 (1982)]. In addition, a hotel is required to have the same management operate both the hotel rooms and the restaurant. [47 P.S. § 1-102].

Despite the aforementioned restrictions, a licensee may contract with a management company to operate all or part of the licensed premises, so long as no unlawful pecuniary interest exists. Section 102 of the Liquor Code [47 P.S. § 1-102] 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.” Section 3.1 of the Board’s Regulations [40 Pa. Code § 3.1] defines “management contract” as an “agreement between a licensee and a management company to operate, manage or supervise all or part of the operation of the licensed premises.” Section 3.141 of the Board’s Regulations provides the following information regarding management contracts:

- a) A licensee may contract with another person to manage its licensed premises.
- b) A management contract must reserve to the licensee the capability to direct its own business.
- c) A management contract must be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.
- d) A management contract may not give a pecuniary interest to a management company.

[40 Pa. Code § 3.141 (emphasis added)].

Agreements between 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 further information would be helpful, please feel free to contact 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.

Wendy Parides and Lynda Mussi

August 14, 2013

Page 3

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, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-376