

August 26, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

Tim Williams

RE: Employment of Convicted Felon

Dear Mr. Williams:

ISSUE: This office is in receipt of your e-mail dated August 9, 2013, wherein you indicate that you hold a license with LID 57445. You explain that you are considering employing an individual who was convicted of a felony for embezzlement. You indicate that this individual is currently on probation and paying restitution. You state that if hired, this individual will be under constant supervision. You ask if there is anything that would prohibit you from hiring this individual to work in your licensed establishment.

Pennsylvania Liquor Control Board (“Board”) records indicate that the Tuscan Tavern, LLC holds Restaurant Liquor License No. R-1983 (LID 57445) for premises located at 21 East Chestnut Street, Washington, Pennsylvania.

OPINION: Until 2002, the Liquor Code included a provision that effectively prevented the employment of any person with a criminal conviction history. It is now generally permissible for a licensee to employ someone with a criminal record, unless that criminal record involves prostitution.

Please note that the Board may still consider criminal records of licensees, or officers, directors, managers, or stockholders of licensees, because sections 404 and 437 of the Liquor Code require that licensees be persons of good repute, and the Board’s Regulations specify that criminal convictions impact a person’s reputation. [47 P.S. §§ 4-404, 4-437; 40 Pa. Code §§ 1.5, 5.23]. Sections 404 and 437 of the Liquor Code also permit the Board to refuse a license to persons with a felony conviction in the five (5) years prior to their application. [*Id.*]. Divestiture of such persons may be required. [40 Pa. Code § 17.41]. However, the criminal records of mere employees are generally not a consideration, although there might be occasions when it could be a factor in the renewal of the license. For example, if the bartender was arrested for and convicted of selling drugs out of the bar and

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the licensee was aware or should have been aware of this practice, it could become part of a non-renewal action at some point.

Please do not hesitate to contact this office should you have additional questions.

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

LCB Advisory Opinion No. 13-396