

August 28, 2013

Telephone: 717-783-9454
Fax: 717-787-8820

John G. Kramb
15 West Main Street
P.O. Box 300
Fairfield, PA 17320

RE: Interlocking Business Prohibition

Dear Mr. Kramb:

ISSUE: This office has been forwarded your letter of August 17, 2013, originally directed to Governor Thomas Corbett for response. You advise that you purchased the Fairfield Inn in Fairfield, Pennsylvania, at a public auction. You also purchased the right to seek the transfer of the associated restaurant liquor license (“R license”). You advise that you and your wife held a limited winery license (“LK license”). You further advise that you had your name removed from the LK license and that license is solely in your wife’s name. You became sole owner of the R license. Both licenses are held by limited liability corporations (“LLCs”).

You state that you received notification from the Pennsylvania Liquor Control Board’s (“Board”) Bureau of Licensing (“Licensing”) that an interlocking business prohibition exists because 1) you own the real property from which the LK license rents, and 2) your wife is a guarantor on the loan which finances the purchase of the Inn and the R license. You further advise you believe this to be an unreasonably narrow interpretation of the law. You note that this is a legislative prohibition and not an administrative prohibition; however, you request that the law be changed and the Governor “induce the LCB to issue the R license” to you.

Board records indicate that indicate that Hiwassee Acres, LLC holds Limited Winery License No. LK-134 (LID 43143) for use by it at premises located at 251 Peach Tree Road, Orrtanna, Pennsylvania. Additionally, Board records indicate that Historic Fairfield Inn, LLC is the applicant for transfer of Restaurant Liquor License R-18698 (LID 68005) for use by it at premises located at 15 West Main Street, P.O. Box 300, Fairfield, Pennsylvania. John G. Kramb is listed as the proposed-Approved Manager.

OPINION: As you appear to be aware, the Liquor Code imposes strict interlocking business prohibitions. An LK license is a manufacturing license; whereas, an R license is

a retail license. Be advised that section 438(c) of the Liquor Code generally prohibits a person from possessing more than one (1) class of license. [47 P.S. § 4-438(c)].

Section 411 of the Liquor Code generally prohibits someone from simultaneously holding an interest in both a retail license and a manufacturing license. [47 P.S. § 4-411]. Section 411(c) of the Liquor Code, in relevant part, states that

Excepting as herein provided, no manufacturer, or officer, director, stockholder, agent or employe of a manufacturer shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same, for which a hotel, restaurant or club license is granted; nor shall a manufacturer, importer or sacramental wine licensee, or officer, director, stockholder, agent or employe of a manufacturer, importer or sacramental wine licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any hotel, restaurant or club licensee, his servant, agent or employe, for equipping, fitting out, or maintaining and conducting, either in whole or in part, a hotel, restaurant or club licensed for the selling of liquor for use and consumption upon the premises.

[47 P.S. § 4-411(c)(emphasis added)]. Likewise, section 411(d) has a similar prohibition, and states,

Excepting as herein provided, no hotel licensee, restaurant licensee or club licensee, and no officer, director, stockholder, agent or employe of any such licensee shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or the equipment of any property or any mortgage lien against the same, used by a manufacturer in manufacturing liquor or malt or brewed beverages; nor shall any hotel, restaurant or club licensee, or any officer, director, stockholder, agent or employe of any such licensee, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof, to any manufacturer for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used for the manufacture of liquor or malt or brewed beverages.

[47 P.S. § 4-411(d)(emphasis added)].

A limited exception to the above exists. Please note, that a person who holds a five percent (5%) or less interest in a publicly or privately-held entity owning a restaurant or eating place retail dispenser license is not deemed to have a "financial interest" and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee. [47 P.S. §§ 4-411(e), 4-443(g)].

An additional exception exists for a manufacturer's license or limited winery licensee located at the same location as a hotel or retail dispenser license. Specifically, sections 411 and 438 state:

An entity may acquire both a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for use at the same location and more than one location may be so licensed. The licenses and a person's interest in the licenses or in the entity holding the licenses shall not be subject to this section.

[47 P.S. §§ 4-411; 4-438(c) (emphasis added)].

In the scenario you have provided in your letter to Governor Corbett, neither of the above listed statutory exceptions apply. Thus, under the Liquor Code you are prohibited from simultaneously possessing an interest in an LK and an R license for use at different locations. However, if you were to couple either the R license with a manufacturing license for use at the same location, or couple the LK license with a retail license for use at the same location, the interlocking business prohibitions found in the Liquor Code would no longer apply.

Additionally, it is permissible, under the Liquor Code, for a husband to hold an R license and his wife to hold an LK license, as long as the finances pertaining to each license are kept completely separate from the other. In this case, your ownership of the property where the LK is located creates an issue.

As a result of the prohibitions in sections 411(c), and 411(d), it would be impermissible for you to own the real estate that is leased to the LK license when your wife is the sole shareholder in the corporation holding the LK license. Either your wife must relinquish ownership of the LK license, or you must relinquish ownership of the real estate. The converse that you cannot hold an R license and at the same time be landlord to an LK is also true.

There is no prohibition in the Liquor Code that would prevent you from selling the real estate to your wife. Please note, however, that neither of you would be able to co-sign a loan for the other or in any other way co-mingle business finances.

Finally, you ask the Governor's office to "induce the LCB to issue the R license to me." As mentioned above, this would be impermissible under the Liquor Code. Moreover, as members of the Executive Branch of Government, neither the Board nor the Governor's Office have the ability to change the Liquor Code. As an administrative agency the Board does not have the authority to modify or ignore existing law. As a creature of statute, the Board cannot exercise power that has not been explicitly given to it by the Legislature. Should you wish to see the Liquor Code amended, it is recommended you contact your local representative or senator.

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. 13-405
Governor's Correspondence COR-0109454