

September 10, 2013

Telephone: (717) 783-9454

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Veronica M. Walker
Redevelopment Authority of the City of Butler
115 East Cunningham Street
Butler, PA 16001

Re: Distributor on Board of Public Venue Licensee

Dear Ms. Walker:

ISSUE: This is in response to your e-mail sent on September 7, 2013, wherein you advise that you are the recording secretary on behalf of the City of Butler Parks Recreations Grounds and Facilities Authority (“Licensee”). Licensee consists of seven (7) board members, four (4) of which hold the offices of Chairman, Vice Chairman, Secretary, and Treasurer. You advise that recently, City Council appointed a new board member, a Mr. William S. O’Donnell, who owns a beer distributorship. You note that Mr. O’Donnell is not an officer, only a board member, but ask if Mr. O’Donnell is eligible to be on Licensee’s board.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that the City of Butler Parks Recreation Grounds and Facilities Authority hold Public Venue Liquor License No. PV-99 (LID 59976) for the Pullman Ball Park, located at 100 Pullman Park Place, Butler, Pennsylvania. Further, records indicate that William S. O’Donnell is the President of Bill’s Beer Barn, Inc., which holds Distributor License No. D-3535 (LID 5093) for the premises located at 253 New Castle Road, Butler, Pennsylvania.

OPINION: Section 412 of the Liquor Code describes a public venue license as a restaurant liquor license that is issued to a public venue. [47 P.S. § 4-412]. Therefore, a public venue license is subject to the same rules and restrictions as a restaurant liquor license.

Sections 411 and 443 of the Liquor Code detail prohibited businesses between different licensees of the Board, known generally as interlocking business prohibitions. [47 P.S. §§ 4-411, 4-443]. One such prohibition is set forth in section 411(e):

Except as herein provided, no hotel, restaurant, retail dispenser or club licensee, and no officer, director or stockholder, agent or employ of any such licensee shall in any wise be interested, directly or indirectly, in the ownership or leasehold of any property or ...equipment ... or any mortgage... used by a distributor, [or] importing distributor...in the conduct of his business....

[47 P.S. § 4-411(e)]. Another prohibition is set forth in section 443(b):

No distributor or importing distributor and no officer or director of any distributor or importing distributor shall at the same time be a ... liquor licensee, or be an officer, director, stockholder or creditor of a ... liquor licensee....

[47 P.S. § 4-443(b)].

However, both of these sections of the Liquor Code include an exception to these prohibitions which may be relevant to the scenario you describe:

[N]othing contained in this section shall be construed to prohibit a member of the governing board of a public authority created under subdivision (n) of Article XXIII of the act of August 9, 1955 (P.L. 323, No. 130), known as “the County Code,” from having an interest in a distributor or importing distributor license notwithstanding the fact that the public authority has an interest in one or more retail licenses or acts as a landlord for one or more retail licenses.

[47 P.S. §§ 4-411(e), 4-443(g)].

Therefore, if the governing board of the Licensee was created under subdivision (n) of Article XXIII of the County Code, then a beer distributor may serve as an officer on Licensee’s board. If the governing board was not created under that act, then a beer distributor may not serve on Licensee’s board. Your city solicitor may be able to provide you with specifics on the creation of Licensee’s board.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR

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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

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