

October 17, 2013

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Julie Brennan  
Legislative Aide to Sen. John Wozniak  
Lock Haven District Office

**Re: Loggia Giosue Carducci Lodge No. 146, Inc.**

Dear Ms. Brennan:

ISSUE: Your e-mail sent on October 15, 2013, to Val Biden was forwarded to this office for response. You are requesting an advisory opinion on behalf of Loggia Giosue Carducci Lodge No. 146, Inc. (“Licensee”), which holds a catering club license. You advise that Licensee is a Pennsylvania non-profit corporation that is also a local Sons-of-Italy-affiliated lodge. By way of background, you explain that the state and federal Sons of Italy organizations have split. Licensee has been told that it must be affiliated with the state Sons of Italy lodge in order to maintain its liquor license, and if Licensee does not, it must place the license in safekeeping for a year before being allowed to have a license independent of the state lodge.

You ask if Licensee, as a local lodge, must maintain an affiliation with the state lodge in order to maintain its liquor license. If Licensee chooses not to be affiliated with either the state or federal lodge, you ask if Licensee will be required to put its liquor license into safekeeping for a period of time or will it be required to do anything else to maintain its current liquor license.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Licensee holds Catering Club Liquor License No. CC-3558 (LID 46634) for the premises located at 1 Henderson Street, Lock Haven, Pennsylvania.

OPINION: Generally, the Liquor Code does not require revocation of the license merely because a licensee is no longer affiliated with either the state or federal lodge. There is an exception to the general rule, which is set forth in section 461.1 of the Liquor Code and which provides that any license issued to an incorporated unit of a national veteran’s organization must be suspended or revoked upon the revocation of the charter held by the post or upon request of the state organization. [47 P.S. § 4-461.1]. However, the Sons of Italy is not a national veteran’s organization; it is a fraternal organization for Italian-Americans. Therefore, section 461.1 is not applicable.

Records maintained by both the Board and the Pennsylvania Department of State confirm that Licensee is a non-profit domestic corporation. Section 5505 of the Nonprofit Corporation Law of 1988 [15 Pa.C.S.A. § 5505] provides that the bylaws of a non-profit corporation shall operate as regulations among the members of the corporation. Further, section 5.81 of the Board's Regulations state that a "club licensee shall adhere to the provisions of *its* constitution and bylaws." [40 Pa. Code § 5.81 (emphasis added)]. These provisions clearly indicate that it is Licensee's bylaws, and not the bylaws of an affiliated organization, that control the operation of the licensed premises. Accordingly, so long as Licensee acts in conformity with its own bylaws, there is no violation of the Liquor Code and it may continue to operate. See Dyle E. Bray Post No. 739 v. Dyle E. Bray Post Home Ass'n, 663 A.2d 300 (Pa. Cmwlth. 1995) (Post may not involuntarily dissolve Home Association when the two are separate entities). Conversely, if Licensee's bylaws allow for third parties, such as a state or federal organization, to act on behalf of Licensee, then Licensee may be required to act accordingly.

If Licensee is required, by its bylaws, to be affiliated with either the state or federal lodge, but it does not wish to be so affiliated, it would be necessary for Licensee to place its liquor license into safekeeping, so as not to operate in violation of its bylaws. Please note that a club license may be held in safekeeping for up to one (1) year, or, upon proper application to the Board, for one (1) additional year. [47 P.S. § 4-474]. If the license is not removed from safekeeping or transferred to another club within these two (2) years, the license shall be revoked and the transfer of the license shall not be permitted. [Id.].

While the license is in safekeeping, Licensee would have to find – or create – a new club that could apply for the transfer of the liquor license, presuming, of course, that such actions would not violate Licensee's bylaws. A "club" is defined in the Liquor Code as the following:

any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, **which, if incorporated, has been in continuous existence and operation for at least one year**, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to

issue a license if it appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment. The term includes a privately-owned private golf course.

[47 P.S. § 1-102 (emphasis added)].

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  
Valerie Biden, Executive Assistant, Office of Regulatory Affairs

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