

October 18, 2013

Telephone: (717) 783-9454

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Pamela Troutman

RE: Lease of Golf Course

Dear Ms. Troutman:

ISSUE: This office is in receipt of your e-mail dated September 10, 2013, wherein you indicate that you are the manager of Shank's at Lykens Valley Golf Course/T & L Investments. You explain that you wish to lease your property to an outside company while retaining the liquor license in the owner's name. You ask for guidance as to the proper procedures for accomplishing this. You further ask what laws would continue to apply to the owner of the liquor license if you leased the golf course.

Pennsylvania Liquor Control Board ("Board") records indicate that T & L Investments ("T&L") holds Privately-owned Public Golf Course Liquor License No. PGR-287 (LID 59461) for premises located at 1724 State Route 25, Millersburg, Pennsylvania.

OPINION: Section 461(e.1) of the Liquor Code [47 P.S. § 4-461(e.1)] permits a license to be issued to the operator of a privately-owned public golf course. The holder of a privately-owned public golf course license must operate a golf course, as that term is defined in sections 102 and 461(e.1) of the Liquor Code. [47 P.S. §§ 1-102; 4-461(e.1)]. Therefore, you would not be permitted to lease the property as you have proposed in your e-mail and retain ownership of your license because if you lease the property as you proposed, you would no longer be "operating a golf course," which is required for you to hold a privately-owned public golf course license.

While the holder of a privately-owned public golf course license must operate a golf course, as that term is defined in Liquor Code section 102 [47 P.S. § 1-102], section 461(e.1) of the Liquor Code allows the operator of a privately-owned public golf course licensed by the Board to designate a concessionaire to provide food, alcoholic and non-alcoholic beverage service at the restaurant facility. [47 P.S. § 4-461(e.1)]. The Liquor Code, however, prohibits anyone other than a

licensee from having a pecuniary interest in the licensed business. [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)].

Additionally, be advised that it is permissible under certain conditions for a licensee to enter into a management agreement with another person or entity. 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." The Board has traditionally permitted management companies to operate licensed premises on behalf of licensees, provided that those companies do not have an unlawful pecuniary interest in the license, as described above. Agreements between licensees and management companies are reviewed by the Board's Bureau of Licensing ("Licensing") on a case-by-case basis to ensure that no unlawful pecuniary interest exists in such agreements. Provided the management relationship, as evidenced by the management agreement, is approved by the Board, the management company could then lawfully manage the licensed business and premises for the licensee in question.

In sum, you would not be permitted to lease the golf course to an outside company while retaining the liquor license in the landlord's name. However, it would be permissible for you to enter into a management agreement with such a company, subject to Board approval.

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

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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. 13-458