

November 25, 2013

Telephone: (717) 783-9454

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John Muntz

Re: Nomination of Officers and Criminal Records

Dear Mr. Muntz:

ISSUE: This is in response to your e-mail sent on November 13, 2013, wherein you advise that a member of your club has been nominated for the position of "Director." You advise that the nominee was convicted of a felony in 1995 and ask if this prohibits him from holding an office with the club. You further advise that two (2) years ago, another club member was elected to office, but during license renewal, that club member was not approved by the Pennsylvania Liquor Control Board ("Board") to hold office. You would like clarification on the matter of this nominee's felony conviction before the election, which is scheduled to be held on December 8, 2013.

Records of the Board indicate that the Four Hundred Club of Nanticoke holds Catering Club Liquor License No. CC-4804 (LID 2202) for the premises at 1211 South Prospect Street, Nanticoke, Pennsylvania.

OPINION: The Liquor Code provides two (2) means for the evaluation of a club's officers. Section 404 of the Liquor Code provides that the Board shall have the discretion to refuse a license to any person who has been convicted or found guilty of a felony within a period of five (5) years immediately preceding the date of application for the said license. [47 P.S. § 4-404]. But this section further provides that licenses shall be granted by the Board only to reputable individuals.

Further, the Board's Regulations explain that, with regard to a person's reputation, "the Board may consider whether that person has been convicted of any crimes including misdemeanors and felonies, the person's history regarding licenses issued by the Board, including the citation history of the licenses, and any other factor the Board deems appropriate." [40 Pa. Code § 1.5]. When the Board determines that a person is not eligible or qualified under the law to have an ownership interest in a licensed business, the Board may issue an order of

divestiture to the licensee directing the removal of the person. [40 Pa. Code § 17.41].

Please be advised that the approval or disapproval of licensees, or officers, directors, managers, or stockholders of licensees, is a determination made by the Board and not this office. As you are a club licensee, that determination will not be made until you submit an application to renew the license. Unfortunately it is not possible for this office to provide you with more definitive guidance as to whether the club member who has been nominated for "Director" will be approved by the Board.

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. 13-505