

December 18, 2013

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Jeremy D. Frey, Esquire
100 East Market Street
York, PA 17401

RE: Question Regarding Brewery License

Dear Attorney Frey:

ISSUE: This office is in receipt of your e-mail dated November 7, 2013, wherein you indicate that you presently represent Hospitality Management Corp. (“Hospitality”), an applicant for a brewery license. Hospitality also holds a hotel license and is applying for a manufacturer’s license so that it can brew malt or brewed beverages (“beer”) at the same location as its existing hotel license.

The shareholders and officers of Hospitality also hold the following interests in other licenses:

- (1) Hospitality’s shareholders own an entity which owns a one percent (1%) ownership interest in a privately-owned public golf course (“PGR”) license. Some of Hospitality’s shareholders are officers in that license as well.
- (2) Hospitality’s shareholders are members in an entity holding an ownership interest and are officers in a separate hotel license as well as the landlord to the hotel.
- (3) Hospitality is a party to a management agreement with three (3) other licenses, a privately-owned private golf course liquor license (“PGC”), a retail license and a recreational license – pursuant to which it receives a share of the proceeds from liquor and/or food sales.

You note that pursuant to section 411 of the Liquor Code [47 P.S. § 4-411], “an entity may acquire both a manufacturer’s license...and a hotel...license for use at

the same location. The licenses and a person's interest in the license or in the licenses or in the entity holding the licenses shall not be subject to this section." You suggest that as a result of this section the various interests of Hospitality and its officer and shareholders in other entities holding hotel and club licenses do not preclude Hospitality from obtaining a manufacturer's license for use at the same location as the hotel license.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that the Hospitality Management Corp. holds Hotel Liquor License No. H-247 (LID 23310) for premises located at One Center Square, P.O. Box 448, Abbottstown, Pennsylvania.

OPINION: Sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license and a manufacturing license. [47 P.S. §§ 4-411; 4-443]. Section 438(c) of the Liquor Code prohibits a person from possessing more than one (1) class of license. [47 P.S. § 4-438(c)]. However, sections 411 and 438 provide an exception which states:

...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)]. Therefore, your understanding is correct. It would be permissible for your client to obtain a manufacturer's license for use by it at its existing licensed hotel. Please note, however, that determinations regarding the granting of any license application rests initially with the Board's Bureau of Licensing and ultimately with the three (3)-member 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.

Jeremy Fry, Esquire
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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. 13-533