

December 20, 2013

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Donald Orr, Jr.
Culbertson Hills, Inc.
300 West Plum Street
P.O. Box 796
Edinboro, PA 16412-2123

RE: Small Games of Chance Questions

Dear Mr. Orr:

ISSUE: This is in response to your e-mail of November 20, 2013, wherein you ask the following questions: (1) whether a privately-owned public golf course with a liquor license (“PGR”) may apply for a small games of chance license; and (2) whether the lessee may operate the small games of chance inside the PGR-licensed facility.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that you are listed as a director, stockholder, and secretary for Culbertson Hills, Inc., trading as Culbertson Hills Golf Club, which holds Restaurant Liquor License R-20449 (LID 24580) for use at the premises located at 300 West Plum Street, Edinboro, Pennsylvania.

OPINION: As you may be aware, on November 27, 2013, Governor Corbett signed into law House Bill No. 1098, which is now known as Act 90 of 2013 (“Act 90”). Act 90 makes numerous changes to the Local Option Small Games of Chance Act (“LOSGCA”) [10 P.S. § 328.101 *et seq.*]. Most notably, Act 90 adds a new chapter to the LOSGCA, Chapter 9, which, beginning January 27, 2014, will permit certain “for-profit” entities that fall within the definition of the term “tavern” and meet other applicable requirements to obtain a “tavern gaming license” to conduct “tavern games” at licensed premises located in a municipality that has adopted a referendum to allow small games of chance. Act 90 defines the term “tavern” as a for-profit hotel, restaurant, privately owned public golf course, brew pub or microbrewery with a valid license to sell liquor or malt or brewed

beverages under the Liquor Code. However, the term does not include the following: a grocery store; a restaurant where the sale of liquid fuels or oil is conducted; a hotel or restaurant located in a casino; or a business on the grounds of a public venue facility where a major league sports team conducts games or races.

Additional information regarding Act 90, including the requirements for obtaining a “tavern game license,” what privileges and responsibilities are associated with holding such a license, and how to apply for a license, can be found in the “What Licensees Should Know About Act 90 of 2013” document available on the Board’s website at www.lcb.state.pa.us. In order to access this document from the main page, place your cursor over the link for “Legal,” select the “Legislative Updates” link, and then select the link for “What Licensees Should Know About Act 90 of 2013.”

To answer your first question, an entity holding either a restaurant liquor license (“R”) or a PGR license issued by the Board would generally fall within the definition of the term “tavern” under Act 90 and be eligible to apply for a “tavern game license.” However, there are other limitations set forth in Act 90 which may prevent such an entity from actually obtaining a “tavern game license.” You should consult the “What Licensees Should Know About Act 90 of 2013” document referenced above for more information on these limitations.

With regard to your second question, please be advised that a “tavern game license” issued pursuant to Act 90 may not be sold, transferred or assigned to any other person. Therefore, generally only the named entity that holds the underlying liquor license would be permitted to hold the “tavern game license” and to operate the “tavern games” authorized to be conducted thereunder. However, it is likely that a management company operating a licensed business on behalf of a licensee pursuant to section 3.141 of the Board’s Regulations [40 Pa. Code § 3.141] would be permitted to conduct “tavern games” at the licensed premises, as long as such management company also meets the requirements imposed by Act 90. Nevertheless, a final decision on this issue will not be made until the Board receives an application for a “tavern game license” involving a management company.

If you have any further questions regarding this matter or any other matter involving the Liquor Code or the Board’s Regulations, please do not hesitate to again contact this office.

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. 13-535