

January 28, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Clarissa A. McGraw
t/a Hickory House Tavern
5817 Business 220
Bedford, PA 15522-9529

Re: Questions Regarding Liquor Law

Dear Ms. McGraw:

ISSUE: This is in response to your e-mail of December 30, 2013, in which you state that you are the owner of Hickory House Tavern. You ask if an employee is permitted to retain his/her position as a bartender if he/she gets arrested for DUI or driving under the influence of drugs or alcohol. You also ask if customers are permitted to use previously purchased beer chips to obtain beer after last call.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Clarissa A. McGraw holds Eating Place Retail Dispenser License No. E-222 (LID 32902) for the premises located at 5817 Business 220, Bedford, Pennsylvania.

OPINION: In response to your first question, the fact of a person having been accused of a crime but not yet convicted will generally not impact that person's status as an employee of a licensed establishment. However, should the employee be convicted of a crime, different considerations may come into play. Until 2002, section 493(14) of the Liquor Code [47 P.S. § 4-493(14)] made it unlawful for a retail licensee or its servants, agents, or employees to permit persons of ill repute, prostitutes, or known criminals to frequent its licensed premises. Because these persons could not frequent the premises, they also could not be employed at the premises. [40 Pa. Code § 5.21]. This law was amended by Act 10 of 2002, and as of April 22, 2002, the ban on known criminals frequenting was eliminated from section 493(14) and, thus, it is no longer against the law for a licensee to employ someone with a criminal record, unless that criminal record involves prostitution. Further, a person's status of being on probation or parole would not prohibit his or her

employment as specified above. However, either the licensee or the employee should verify with the relevant probation and parole office that such employment would not violate the specific terms of the probation/parole.

Please note that the Board may still consider criminal records of licensees, or officers, directors, managers, or stockholders of licensees, because sections 404 and 437 of the Liquor Code require that licensees be persons of good repute, and the Board's Regulations specify that criminal convictions impact a person's reputation. [47 P.S. §§ 4-404, 4-437; 40 Pa. Code §§ 1.5, 5.16(b)]. Sections 404 and 437 of the Liquor Code also permit the Board to refuse a license to persons with a felony conviction in the five (5) years prior to their application. Divestiture of such persons may be required. [40 Pa. Code § 17.41]. However, the criminal records of mere employees are generally not a consideration, although there might be occasions when it could be a factor in the renewal of the license. For example, if the bartender was arrested for and convicted of selling drugs out of the bar and the licensee was aware or should have been aware of this practice, such activity could become a factor in the Board's decision not to renew the licensee's liquor license.

With respect to your final question, there is no statute or regulation in Pennsylvania's liquor laws regarding the timing of a "last call" or even that a "last call" is necessary. However, the Liquor Code does provide that patrons of retail licensed establishments such as yours must leave that part of the premises habitually used for the serving of malt or brewed beverages not later than one-half (½) hour after the time the licensee is required to cease serving alcohol and/or malt or brewed beverages, and they cannot have any previously-served alcohol or malt or brewed beverages in their possession. [47 P.S. § 4-499(a)]. The time at which a retail licensee is required to cease serving alcohol depends on the type of license. Restaurant and hotel liquor and eating place malt beverage licensees are required to stop selling alcohol and/or malt or brewed beverages at 2:00 a.m. [47 P.S. § 4-406(a)]. Thus, patrons of restaurant and hotel liquor and eating place malt beverage licenses must vacate the licensed premises by 2:30 a.m. Further, section 493(16) of the Liquor Code prohibits a licensee from giving, furnishing, serving or delivering any alcohol during the hours and days the licensee is prohibited from selling alcohol. [47 P.S. § 4-493(16)]. In sum, you may not serve beer after 2:00 a.m. to customers who wish to use the beer chips that they previously purchased.

Finally, please note that section 493(1) of the Liquor Code prohibits the service, furnishing or giving of any liquor or malt or brewed beverages to any person who is visibly intoxicated and imposes strict liability on a licensee for violating this section.

Clarissa A. McGraw

January 28, 2014

Page 3

[47 P.S. § 4-493(1)]. This includes service of alcohol to a patron who had previously purchased a beer chip. Please also note that any beer chip purchased during happy hour at a reduced price would have to be redeemed during happy hour.

If you have any additional questions regarding the Liquor Code or the Board's Regulations, please feel free 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. 13-550