

February 11, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Lawrence J. Beaser, Esquire
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998

Re: Payroll Services for Hotel Licensee

Dear Mr. Beaser:

ISSUE: This is in response to your e-mail sent on February 6, 2014, wherein you advise that you represent Pitt WCP Hotel LLC and Ultima Pittsburgh, LLC, which are joint licensees in a hotel license. You advise that the payroll for the hotel is processed through a wholly-owned subsidiary of one (1) of the joint licensees (“the payroll company”). You further advise that the payroll company has no control over the licensed business, does not hire, fire or supervise the employees who work at the hotel, and does not receive any profits from the licensed business. You ask if this office agrees with your analysis that, because the total control of the hotel’s employees rests with one (1) of the licensees, the payroll company is not required to be added to the license as a licensee.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Pitt WCP Hotel LLC & Ultima Pittsburgh, LLC, Joint Licensees, hold Hotel Liquor License No. H-6362 for the premises at 8402 University Boulevard, Moon Township, Pennsylvania.

OPINION: As you are probably aware, unlicensed third parties may not have an unlawful pecuniary interest in a license. [47 P.S. § 4-404]. Section 1.1 of the Board’s Regulations defines “pecuniary interest” as:

[a]n 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)]. In addition, a hotel is required to have the same management operate both the hotel rooms and the restaurant, which means the Board-approved manager must be ultimately responsible for both the hotel's sleeping accommodations and the food and beverage operation at the licensed premises. [47 P.S. § 4-461(c)(6)].

Despite the aforementioned restrictions, a licensee may contract with a management company to operate all or part of the licensed premises, so long as no unlawful pecuniary interest exists. 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." Section 3.1 of the Board's Regulations [40 Pa. Code § 3.1] defines "management contract" as an "agreement between a licensee and a management company to operate, manage or supervise all or part of the operation of the licensed premises." Section 3.141 of the Board's Regulations provides the following information regarding management contracts:

- a) A licensee may contract with another person to manage its licensed premises.
- b) A management contract must reserve to the licensee the capability to direct its own business.
- c) A management contract must be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.
- d) A management contract may not give a pecuniary interest to a management company.

[40 Pa. Code § 3.141].

From the information you provided, it appears that the payroll company is simply providing a service and is not so involved in the operation of the licensed business that a management agreement would be required. As to your specific question, it

would not be necessary to include the payroll company as another joint licensee because the payroll company is providing a service for the licensees and does not have financial and operational control as to the licensed premises.

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. 14-025