March 14, 2014

Telephone: (717) 783-9454
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Joyce Salazar
La Casa de Tapas, Inc.

RE: License Transfer Question

Dear Ms. Salazar:

ISSUE: This is in response to your e-mail dated January 19, 2014, in which you state that you have a licensed restaurant that was closed due to environmental issues at the leased location site. You ask to what areas this license can be transferred if you open another business. It will be presumed for purposes of this response that you are asking about transferring your current restaurant license to another physical location in order to open a new licensed restaurant.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that La Casa de Tapas, Inc. holds Restaurant Liquor License No. R-18780 (LID 64010) for use by it at premises located at 251 North George Street, York, Pennsylvania. You are the president, secretary, treasurer, stockholder, director and Board-approved manager. This license was obtained by way of a place-to-place and person-to-person transfer within the same municipality, effective January 19, 2011 and your license was placed into safekeeping on July 19, 2013.

OPINION: Initially, please be advised that the relocation of your restaurant liquor license from the current location to a new proposed site would be considered a "place-to-place transfer" and would require the filing of an application for transfer with the Board. To obtain an application for transfer, you can contact the Bureau of Licensing at (717)-783-8250, or visit the Board's website at www.lcb.state.pa.us, click on "For Licensees," followed by "Applications and Forms," and then select "Application for Transfer of License and Permit."

The Board's authority to approve or refuse applications for transfers of existing licenses is statutorily prescribed by the Liquor Code. Section 404 of the Liquor Code [47 P.S. § 4-404] specifically grants the Board the authority to approve or refuse applications for transfers of restaurant liquor licenses. Section 404 also clearly

outlines the scope of the Board's authority in performing this function. That is, section 404 grants the Board discretion to approve or refuse an application for transfer of a restaurant liquor license to a new location if the place proposed to be licensed is located within two hundred (200) feet of another premises licensed by the Board or within three hundred (300) feet of any church, hospital, charitable institution, school, or public playground. [Id.]. Section 404 also requires the Board to refuse an application for transfer when, in the Board's opinion, such transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred (500) feet of the place proposed to be licensed. [Id.].

Retail licenses are transferred to other locations within their established municipality, although it is possible to transfer a license to a location in another municipality. This is known as an intermunicipal transfer. Please be advised that section 461(a) of the Liquor Code states, in pertinent part, that "licenses approved for intermunicipal transfer may not be transferred from the receiving municipality for a period of five (5) years after the date that the licensed premises are operational in the receiving municipality." [47 P.S. § 4-461(a)]. Be further advised that section 7.3(d) of the Board's Regulations provides that if a prior approval for transfer was originally granted for transfer to a different municipality, the five (5)-year moratorium on a transfer from the municipality to which the transfer was effected is measured from the date the license becomes operational. [40 Pa. Code § 7.3(d)]. Since your license was not obtained via an intermunicipal transfer, section 461(a) does not apply to you; however, if you are approved for a transfer outside of York City (your current location), this section will apply to the new location.

You should be aware that, depending on your selected new location, there is a possibility that someone may protest the grant of a transfer to that location. Consistent with its statutory grant of authority, the Board has promulgated regulations regarding who may obtain standing to challenge an application for transfer of an existing license and the requirements for doing so. When an application for transfer has been filed, and the license is being transferred to premises not then licensed, a protest may be filed with the Board by any of the following: (1) a licensee whose licensed premises is located within two hundred (200) feet of the premises proposed to be licensed; (2) a church, hospital, charitable institution, school or public playground located within three hundred (300) feet of the premises proposed to be licensed; or (3) a resident of the neighborhood within a radius of five hundred (500) feet of the premises proposed to be licensed. [40 Pa. Code § 17.11(a)].

In order to be considered a valid protest, the protest must be filed with the Board within (30) days of the posting of the notice of application. [40 Pa. Code § 17.13(b)]. The Board may accept an untimely filed protest, but only upon good cause shown for the late filing. [Id.]. If a valid protest is filed, the protestant may be called as a witness to testify as to the fact and nature of the protest in the event that a hearing is convened. [40 Pa. Code § 17.11(c)]. A valid protest made pursuant to section 17.11(a) of the Liquor Code will render the protestant a party to the proceeding. [40 Pa. Code § 7.11(e)].

Furthermore, any person who can demonstrate a direct interest in an application for transfer of an existing license (whether person-to-person, place-to-place, or both) and who can further demonstrate that a Board decision contrary to the person's direct interest will cause the person to be aggrieved may file a petition to intervene. [40 Pa. Code § 17.12(a)]. The petition to intervene may be granted at the discretion of the Board, and the Board may grant or deny the petition in whole or in part or may authorize limited participation. [40 Pa. Code § 17.12(b)]. In order to be valid, a petition to intervene must be filed with the Board within thirty (30) days of the posting of the notice of application. [40 Pa. Code § 17.13(b)]. The Board may accept an untimely filed petition to intervene, but only upon good cause shown. [40 Pa. Code § 17.13(b)].

If the Board orders a hearing, the Board is required to notify those who have been conditionally granted status as protestants or intervenors of the time and place of the hearing at least ten (10) days in advance of the hearing. [40 Pa. Code § 17.13(e)]. The Board will render its final determination as to who has standing as protestants or intervenors based upon the record. [Id.]. The failure of a protestant or intervenor to appear or testify at the hearing may remove the reasons for the protest or intervention from the Board's consideration. [Id.]. In addition, the failure of a protestant or intervenor to raise an issue in a timely-filed protest or petition to intervene precludes the protestant or intervenor from raising that issue at a later time. [Pittsburgh Stake of the Church of Jesus Christ of Latter Day Saints v. Pennsylvania Liquor Control Board, 617 A.2d 843, 846 (Pa. Cmwlth. 1992).].

Also, in the event that the Board determines that two (2) or more protestants or intervenors have substantially similar interests and positions, the Board may indicate the similarity of interests in the notice of hearing and direct that one or more persons testify as representative of the similar interests. [40 Pa. Code § 17.13(f)]. In such instances, designated representatives must advise the Board at the time of the hearing. [Id.]. If no designation has been effected, the Board may select a representative

protestant or intervenor, or permit all or a portion of the group to testify as time permits or as appropriate under the circumstances. [Id.].

Additionally, please be advised that section 402 of the Liquor Code grants the Board the authority to set the time and place of hearings held for the purpose of taking testimony for and/or against applications for transfers of existing licenses. [47 P.S. § 4-402(a)]. The Board may provide for the holding of such hearings by hearing examiners who are learned in the law and who are appointed by the Governor. [Id.].

Finally, please be advised that the Board will only make a determination as to whether to approve an application for transfer after all of the necessary investigations and/or hearings have been conducted.

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,
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