

April 17, 2014

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VIA EMAIL: akz@rkglaw.com

RE: Hotel Bedroom Exemption

Dear Mr. Zeamer:

ISSUE: This office is in receipt of your letter of March 14, 2014, wherein you advise that you represent Globird, LLC, a Pennsylvania Liquor Control Board (“Board”) hotel liquor licensee. You indicate that your client operates under a lease agreement in which it is entitled to occupy certain commercial space on the ground floor of the building. The lease includes the use of ten (10) hotel rooms in order to satisfy the requirements of the Liquor Code. You indicate your client is exploring the possibility of seeking a hotel room exemption. You posit two (2) questions that will be addressed below.

Board records indicate that Globird LLC. is the holder of Hotel Liquor License No. H-103 (LID 50174) for use by it at premises located at 2-12 South Prince Street, Lancaster, Pennsylvania.

OPINION:

- 1) Does this license qualify for a room exemption?

As you appear to be aware, Section 102 of the Liquor Code defines a “hotel” as follows:

‘HOTEL’ shall mean any reputable place operated by responsible persons of good reputation where the public

may, for a consideration, obtain sleeping accommodations and meals and which, in a city, has at least ten, and in any other place at least six, permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public.

[47 P.S. § 1-102].

Section 461 of the Liquor Code also establishes the current minimum requirements for a premises to obtain a hotel liquor license. [47 P.S. § 4-461]. The general definition at section 461(c) of a “hotel” is now as follows:

c. The word ‘HOTEL’ as used in this section shall mean any reputable place operated by a responsible person of good reputation where the public may, for a consideration, obtain sleeping accommodations, and which shall have the following number of bedrooms and requirements in each case--at least one-half of the required number of bedrooms shall be regularly available to transient guests seven days weekly, except in resort areas; at least one-third of such bedrooms shall be equipped with hot and cold water, a lavatory, commode, bathtub or shower and a clothes closet; and an additional one-third of the total of such required rooms shall be equipped with lavatory and commode:

* * *

(4) In municipalities having a population of twenty-five thousand and more but less than one hundred thousand inhabitants, at least forty permanent bedrooms for the use of guests.

[47 P.S. § 4-461(c)(4)]. The City of Lancaster has a population of approximately fifty-two thousand (52,000) persons.

However, in 2006, this section of the Liquor Code was amended to provide that hotel liquor licensees that hold “grandfathered status” under subsection 461(c)(8) no longer need to maintain the number of bedrooms required by section 461(c). “Grandfathered” hotel licenses are those hotel licensees that were originally issued or applied for prior to September 1949. Note that this particular section does not exempt grandfathered hotel liquor licensees from the number of bedrooms required by section 102 of the Liquor Code.

Also in 2006, subsection 461(c)(9) was added to the Liquor Code. [47 P.S. § 4-461(c)(9)]. This subsection provides that hotel liquor licensees that hold grandfathered status under subsection 461(c)(8) no longer need to maintain *any* bedrooms for public accommodation – not even those required by section 102 of the Liquor Code – if they filed, by April 23, 2007, an application with the Board to be exempted from this requirement and the application is approved by the Board. In the case in question, Board records indicate that your client initially applied for a room exemption in 2007. That application was later cancelled. Thus, this exemption would not apply to your client’s scenario.

However, an additional exemption exists under section 461(c)(8.1) of the Liquor Code which permits hotel liquor licenses to be exempt from the current room requirements if they were issued before September 1, 1949, and lapsed not more than once, provided the Board issued a new hotel liquor license prior to January 1, 1971. [47 P.S. § 4-461(c)(8.1)]. Your client’s license was issued prior to September 1, 1949, and the Board has never issued a new license to the property. To the contrary, the license in question has been continuously transferred, never re-issued. Thus, your client’s establishment appears to qualify for an exemption under 47 P.S. § 4-461(c)(8.1). See generally Bolete LLC v. Pennsylvania Liquor Control Bd., CP-39-MD-3477-2010 (Lehigh County Court of Common Pleas 2010). Consequently, if your client wishes to remove all restrictions to room requirements, it must make application to Licensing pursuant to 47 P.S. § 4-461(c)(9.1).

2) Can your client amend its current lease to exclude the bedrooms?

If your client is exempt from the room requirements of Liquor Code, it would be free to amend its lease however it deems appropriate.

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. 14-152