

April 22, 2014

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**RE: Transition to Members Only Premises**

Dear Mr. Mahler:

ISSUE: This office is in receipt of your e-mail March 27, 2014, in which you request an advisory opinion on behalf of your client whom you identify as the owner of "Retail License 61195." The Licensee wants to convert the current premises into a member's only establishment in which members would apply and be awarded membership on a monthly or yearly basis. You rely on Advisory Opinion 99-131, dated April 16, 1999, to support your client's business plan, and further note that your client can do so as long as there is no discrimination as to the distribution of memberships. You also request a second advisory opinion as to the ability of your client to decline membership applicants who have criminal records as evidenced by criminal background checks.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Charles R. Hoynowski holds Restaurant Liquor License No. R-19561 (LID 61195) for premises located at 79 Blackman Street, Wilkes Barre, Pennsylvania.

OPINION: Please be advised that section 102 of the Liquor Code defines a restaurant as "a reputable place operated by responsible persons of good reputation and habitually and principally used for the purpose of providing food for the public, the place to have an area within a building of not less than four hundred square feet, equipped with tables and chairs, including bar seats, accommodating at least thirty persons at one time." [47 P.S. § 1-102]. As long as the above definition is met, a restaurant licensee may operate as it sees fit. Accordingly, the conversion of the premises to a "members only establishment" is permissible.

In response to your second advisory request as to the intended policy of rejecting membership of applicants based upon criminal convictions, please be advised that Liquor Code has limited provisions that address service at a licensed premises.

Section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] provides that it is unlawful to sell, furnish, or give any alcoholic beverages to any visibly intoxicated person or to any minor. Section 493(14) of the Liquor Code [47 P.S. § 4-493(14)] provides that it is unlawful to permit, *inter alia*, persons of ill repute or prostitutes to frequent a licensed premises. The term “ill repute” has never been defined precisely for purposes of the Liquor Code. Several courts have ruled that persons of ill repute are those who are known generally and identifiably in the community as possessing such a reputation. [40 Pa. Code § 1.5; Street Road Bar & Grille, Inc. v. Pennsylvania Liquor Control Bd., 583 Pa. 72, 876 A.2d 346 (2005)]. Court decisions have held that a licensee is in the best position to know the reputation of the persons it sees frequent its premises. Therefore, it is generally up to each licensee to determine whether a particular person is a person of ill repute.

Other than these subsections mentioned above, there is nothing in the Liquor Code that specifically dictates when persons may be refused service at a licensed premises. A licensee is subject to citation for violations of the laws of the Commonwealth [47 P.S. § 4-471(a)], which includes the Pennsylvania Human Relations Act (“PHRA”). The PHRA prohibits discrimination based on factors such as race, gender, and ethnicity. [43 P.S. § 951 *et seq.*]. Therefore, a licensee cannot unlawfully discriminate against certain classes that are protected under the PHRA. In determining admission of members, as long as it is not done in an illegally discriminatory manner, a licensee may refuse to serve/to admit whomever it chooses.

If you have any further questions or concerns regarding this matter, 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,

Eric N. Mahler, Esquire

April 22, 2014

Page 3

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. 14-153