

May 15, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Steven Spataro
15 Independence Road
Avella, PA 15312
VIA FACSIMILE: 724-587-5202

Re: Ownership of License

Dear Mr. Spataro:

ISSUE: This is in response to your letter sent via fax on April 16, 2014, wherein you advise that about nine (9) years ago, you started doing business as a limited liability company (“LLC”), S. A. Spataro, LLC. In addition, you also have a construction company, S. A. Spataro & Sons, which is owned by the LLC.

Someone advised you that you should have alerted the Pennsylvania Liquor Control Board (“Board”) as to the change in business structure. You ask if you need to restructure or if you may keep your license in your personal name, even though you do business in your bar as an LLC.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Steven A. Spataro, trading as Sputsy’s Pub & Grub, holds Restaurant Liquor License No. R-6322 (LID 39275) for the premises at 42 Campbell Street, Avella, Pennsylvania. Records of the Pennsylvania Department of State, Bureau of Corporations, indicate that S. A. Spataro, LLC, and the construction company, S. A. Spataro & Sons, also have a registered address of 42 Campbell Street, Avella, Pennsylvania.

OPINION: Please note that when you created the LLC, you created another entity that is separate and distinct from yourself. Legally, the LLC is a different entity from you; it may be helpful to think of the LLC as another person.

You advised that you do business in your bar as the LLC, even though you personally hold the liquor license. From a legal perspective, such an operation is the equivalent of having one (1) person holding the liquor license while another

person runs the business and therefore has a financial or pecuniary interest in the liquor license.

Such an arrangement is prohibited by the Liquor Code and the Board's Regulations. Unlicensed third parties, such as the LLC, 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:

1. Employing a majority of the employees of the licensee.
2. Independently making day-to-day decisions about the operation of the business.
3. 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)].

Therefore, the most straightforward solution to bring your business into compliance with the Liquor Code and the Board's Regulations would be for you to transfer the liquor license to the LLC. Enclosed please find the packet of forms used for the transfer of licenses from person to person, place to place, or both, subject to the specified limitations as to municipality or county. The type of transfer you are seeking is a person-to-person transfer, and the fee for such a transfer is six hundred fifty dollars (\$650.00). The transfer of an amusement permit is an additional ten dollars (\$10.00). If you have any questions regarding the completion of the forms, you may call the Board's Bureau of Licensing at (717) 783-8250.

You asked if you could keep the license in your personal name, even though you do business as an LLC. The only way you could keep the license in your name and continue to have the LLC operate the business would be for you, as the licensee, to contract with the LLC as a management company that would operate all or part of the licensed premises. 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.”

Please note, however, that a management contract with the LLC would still not allow the LLC to have a pecuniary interest in the license. 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]. Because of the requirement that the management company may not have a pecuniary interest in the license, a management agreement with the LLC may not be the best solution.

Please be aware that there could also be an issue with regard to presence of the construction company at the same address as the licensed premises. Section 3.52 of the Board’s Regulations provides:

- (a) A licensee may not permit other persons to operate another business on the licensed premises....

* * * * *

- (c) A licensee may not conduct another business on the licensed premises without Board approval.

[40 Pa. Code § 3.52].

Under the current circumstances, since you, personally, are the licensee, you cannot allow the construction company to operate its business on the licensed premises, or else you are in violation of section 3.52(a) of the Board's Regulations. However, if you transfer the license to the LLC, it might be possible for the LLC to allow the construction company to operate its business on the licensed premises under section 3.52(c) of the Board's Regulations, since the LLC owns the construction company. Note that the LLC would need to obtain Board approval or it will be in violation of section 3.52(c).

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. 14-222