

May 16, 2014

Telephone: (717) 783-9454

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Mark

Re: Election of Officers with Criminal Records

Dear Mark:

ISSUE: This is in response to your e-mail sent on April 3, 2014, wherein you state that you are the vice-president of a fire company that holds a club liquor license. You advise that elections are forthcoming, and that there is a member who intends to run for bar manager, who, if elected, would be listed on the liquor license. It is your understanding that this person cannot have been convicted of a felony. You seek clarification/confirmation on this matter. This response is predicated upon reliance on your statement that the fire company holds a club liquor license and is a licensee.

OPINION: The Liquor Code provides two (2) means for the evaluation of a club's officers. Section 404 of the Liquor Code provides that the Board shall have the discretion to refuse a license to any person who has been convicted or found guilty of a felony within a period of five (5) years immediately preceding the date of application for said license. [47 P.S. § 4-404]. This section further provides that licenses shall be granted by the Board only to reputable individuals. Please note that the Board's consideration of criminal records extends not only to licensees, but to officers, directors, managers, or stockholders of licensees. [47 P.S. §§ 4-404, 4-437; 40 Pa. Code §§ 1.5, 5.23].

Further, the Board's Regulations explain that, with regard to a person's reputation, "the Board may consider whether that person has been convicted of any crimes including misdemeanors and felonies, the person's history regarding licenses issued by the Board, including the citation history of the licenses, and any other factor the Board deems appropriate." [40 Pa. Code § 1.5]. When the Board determines that a person is not eligible or qualified under the law to have an ownership interest in a licensed business, the Board may issue an order of divestiture to the licensee directing the removal of the person. [40 Pa. Code § 17.41].

Please be advised that the approval or disapproval of licensees, or officers, directors, managers, or stockholders of licensees, are a determination made by the Board and not this office. As a club licensee, that determination will not be made until an application to renew/validate the license is submitted since that is when a club licensee is required to inform the Board of a change of the Board-approved manager. [40 Pa. Code § 5.91(c)]. At the time of renewal, the Board may consider the criminal records of a club's manager, officers, directors, etc. [47 P.S. § 4-470(a)(i)]. If there are new officers, directors or manager/steward of the club listed since the last renewal was filed, the club licensee is required to file a Request for Criminal Record Check (PLCB Form E-2314) with the renewal and change of officers' form. [40 Pa. Code § 5.91]. Unfortunately it is not possible for this office to provide you with more definitive guidance as to whether the club member who intends to run for bar manager will be approved by the Board.

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. 14-224