

May 19, 2014

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Jay Thomas

RE: Loss of Authorization from National Organization

Dear Mr. Thomas:

ISSUE: This is in response to your e-mail dated April 21, 2014, wherein you inquire about whether the Mid-Valley Veterans Home Association, a subordinate unit of the Disabled American Veterans national organization, can sell and transfer its catering club liquor license and donate its unopened alcohol inventory to another organization, given that the home association no longer has authorization from the national organization to operate a licensed establishment. You request legal advice on the best way to resolve such issues which have arisen as a result.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Mid-Valley Veterans Home Association holds Catering Club Liquor License No. CC-4963 (LID 3785) for the premises located at 516 Storrs Street, Dickson City, Pennsylvania.

OPINION: Section 5.81 of the Board's Regulations [40 Pa. Code § 5.81] requires club licensees to adhere to the provisions of their constitutions and bylaws. Therefore, if the club is not authorized to sell alcohol by its national organization, and the club's constitution or bylaws prohibit alcohol sales by the club if such sales are not authorized by the club's national organization, then the club cannot sell alcohol.

However, please be advised that the interpretation of a catering club's constitution and bylaws is up to the discretion of the club, and neither the Board nor this office will become involved in reviewing a club's interpretation of its own constitution or bylaws outside the scope of an appeal in an enforcement action. With regard to the best course of action, you may want to consider seeking the assistance of experienced private counsel in dealing with the organizational matters described.

Please be advised that a liquor license is a privilege between the Board and the licensee. [47 P.S. § 4-468(d)]. A license can only be transferred to another party if the licensee submits a transfer application which will involve an investigation by the Bureau of

Licensing (“Licensing”) and ultimately an approval by the Board. If the club decides to sell the license to another eligible club, be advised that section 7.2 of the Board’s Regulations provides, relative to person-to-person transfers:

When an application is filed for transfer of a license from one person to another, a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representative. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of ownership of the business may not pass until approval of the transfer of license has been given. The transferee shall exhibit a deed or lease for the premises, or bill of sale, or both, as the case may be. The license may not change hands until the license transfer has been approved by the Board and the original licensee may continue the operation of the business and may sell liquor or malt or brewed beverages until formal approval of the transfer is given. If the original licensee does not continue operation of the business under the license, no liquor or malt or brewed beverages may be sold and the license shall be surrendered to the Board until the transfer is approved.

[40 Pa. Code § 7.2].

Section 7.4 of the Board’s Regulations provides, relative to person-to-person, place-to-place transfers (i.e., new owner and a new location):

When a transfer involves a change of both location and ownership, the new establishment, if retail liquor or retail dispenser, shall be ready for operation before the license transfer will be approved. The new applicant shall satisfy the Board that he is the owner or lessee of the premises, the fixtures and equipment therein. Liquor or malt or brewed beverages may not be sold by the applicant until the transfer of the license has been approved. The transferor, provided his fixtures and equipment are not involved in the transfer, may continue to operate at his original place of business until notified that the transfer of the license to the applicant has been approved, at which time the license and Wholesale Purchase Permit Card, if any, shall be surrendered by the transferor to the Board.

[40 Pa. Code § 7.4].

Applications for transfer of the catering club liquor license may be obtained on the Board's website at www.lcb.state.pa.us, by clicking on the section entitled "For Licensees," and then on "Forms and Applications."

Please note that should you cease operating for a period of fifteen (15) consecutive days, the license must be returned to the Board to be placed into safekeeping, after which you can no longer operate or sell alcohol. [47 P.S. § 4-491(1); 40 Pa. Code § 7.31(a)]. Likewise, if your establishment no longer meets the definition of a "club" as that term is defined in section 102 of the Liquor Code, [47 P.S. § 1-102], you would no longer have authority to operate the club license, and it must be placed into safekeeping.

Once, that license is in safekeeping, please be advised that a club license may be kept in safekeeping for one (1) year or upon proper application to the Board, for an additional year. [47 P.S. § 4-474]. Your license may be removed from safekeeping either when you resume lawful operation of the licensed business or upon approval of a transfer. [40 Pa. Code § 7.31]. If the license has not been removed from safekeeping or no transfer application has been filed within that two (2) year period, the license will be revoked. [47 P.S. § 4-474].

If the licensee does not wish to operate pending the transfer or to sell its inventory to the transferee, its options would be to sell the liquor outside of the Commonwealth (if legal) or to return unopened beverages to the suppliers of the products, if that is acceptable to the suppliers. If the alcohol was unopened and purchased from a Pennsylvania wine and spirits store, it can be sold back to the Board, at the Board's discretion, pursuant to section 9.111(a) of the Board's Regulations, subject to a restocking fee of twelve and one-half percent (12.5%), pursuant to section 9.113(a) of the Board's Regulations. [40 Pa. Code §§ 9.111(a), 9.113(a)]. Malt or brewed beverages may be sold only to the transferee of the license or to the distributor, importing distributor, or brewery from which they were originally purchased. [40 Pa. Code § 9.111(b)(2)].

With regard to your question about donating your inventory of unused alcohol to another organization, be advised that section 13.51 of the Board's Regulations prohibits licensees of one (1) class from contributing to or accepting from another licensee or group of licensees of a different class, their servants, agents or employees, anything of value by means of advertisements, contributions, purchase, sale of tickets, or donations or by any device, for any purpose. [40 Pa. Code § 13.51]. Accordingly, nothing would prevent your club from donating alcohol to another club or an unlicensed charitable entity. However, it would not be permissible for your club to donate alcohol to another licensee, such as a manufacturer, or an importing distributor or distributor, or limited winery.

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

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
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