

June 5, 2014

Telephone: (717) 783-9454

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Samuel Guesto, Jr.
Tubbies Place, Inc.

E: Township Manager Holding Interest in Liquor License

Dear Mr. Guesto:

ISSUE: This is in response to your e-mail dated May 15, 2014, in which you inquire whether it is permissible to own a licensed establishment and serve as a Township Manager.

Pennsylvania Liquor Control Board (“Board”) records indicate that Tubbies Place, Inc. holds Restaurant Liquor License No. R-13408 (LID 62015) for use by it at premises located at 1215-1217 South Main Street, Wilkes-Barre, Pennsylvania.

OPINION: You indicate that you have been appointed Township Manager of Hanover Township, PA and your duties include “administration of all departments, but no ability to arrest, issue citations, sentence any person, hire, fire, promote, or demote.”

Section 401(a) of the Liquor Code [47 P.S. § 4-401(a)] provides that no person who holds any public office which involves the duty to enforce any of the penal laws of the United States, or of the Commonwealth of Pennsylvania, or any penal ordinance or resolution of any political subdivision of this Commonwealth, can be issued a restaurant license, nor may such a person have any interest, directly or indirectly, in any such license. However, section 437(d) of the Liquor Code exempts certain officials such as township supervisors, city councilpersons, and mayors not having arrest powers, and any other public official who does not have the ability to arrest or the ability to impose a criminal sentence. [47 P.S. § 4-437(d)].

Since you have no arrest powers or the ability to impose a criminal sentence, you are exempt from the prohibition of 47 P.S. § 4-437(d), and you may continue as the sole owner of Tubbies Place and serve as a Township Manager.

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June 5, 2014

Page 2

In closing, if you have any further questions or concerns regarding this matter 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,

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. 14-250