

September 19, 2014

Mr. Daniel Saxton

E: Catering Club Operations

Dear Mr. Saxton:

ISSUE: This is in response to your correspondence received in our office on August 16, 2014, in which you indicate that you are an officer of a volunteer fire company that holds a club catering liquor license with the Pennsylvania Liquor Control Board (“Board”). The club is examining alternative business models to increase profitability, and is contemplating placing the license into safekeeping. You inquire whether the club may rent or lease the facility to an outside entity for the purpose of operating the kitchen and bar.

Board records indicate that Goodwill Hose Co., Inc., located at 500 Reagan Street, Sunbury, Pennsylvania 17801, holds Catering Club Liquor License No. CC-3741 (LID 1733) for that location.

OPINION: According to section 474 of the Liquor Code, whenever a club license has been returned to the Board for the benefit of the licensee due to the licensed establishment not having been in operation for any reason whatsoever for a period of time not exceeding fifteen days, the license shall be held by the board for the benefit of the licensee for a period of time not exceeding one year. Upon proper application to the board, safekeeping may be extended for an additional year. A license in safekeeping shall be revoked at the termination of the period, and transfer of the license shall not be permitted after the termination of the period.

An outside organization or entity may rent or lease space from Goodwill Hose Co. with no restrictions on usage, other than the prohibition to sell alcohol if the license is placed in safekeeping. When a license is placed in safekeeping, the (formerly) licensed premises is treated as unlicensed premises for purposes of the Liquor Code.

If Goodwill Hose Co. places its license in safekeeping and chooses to lease or rent space to an outside entity or organization, that outside entity or organization could

not sell alcohol by virtue of a separate liquor license so long as only (1) license is in effect at one (1) time at any particular location.

If Goodwill Hose Co. maintains its active license, they may engage a management company to operate the kitchen and bar. 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.” 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]

The Board has traditionally permitted management companies to operate licensed premises on behalf of licensees, provided that said companies do not have an unlawful “pecuniary interest” in the license. Section 1.1 of the Board’s Regulations defines “pecuniary interest” as:

An 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:

- i. Employing a majority of the employees of the licensee.
- ii. Independently making day-to-day decisions about the operation of the business.

- iii. 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)].

Another alternative if Goodwill Hose Co. maintains an active license is the use of a concessionaire for kitchen operations. The engagement of a concessionaire or independent contractor for the preparation of food in part of the licensed premises is permitted by the holders of public venue, club or catering club, municipal golf course, privately-owned private golf club or performing arts facility licenses. [47 P.S. §§ 1-102, 4-412, 4-413, 4-461; 40 Pa. Code §§ 5.81, 5.82].

If a club does not sell food, it may permit a food concession, which sells food directly to patrons, to be operated by a person who is not an officer or employee of the club. The concessionaire may not hire a person who is an officer or employee of the club or who is a licensee or an employee of another licensee. [40 Pa. Code § 5.82(a)]. The concessionaire shall buy, prepare, sell and collect for the food, and receive the profits, and pay its own employees.

Please be advised that under the concessionaire approach, neither the concessionaire nor its employees are permitted to handle or dispense liquor or malt or brewed beverages. Likewise, club employees are not permitted to serve or collect for food. Separate checks for food and liquor or malt or brewed beverages shall be presented to each member served. [40 Pa. Code § 5.82(b)]. Records covering operations of the concession shall be maintained for a period of two (2) years on the licensed premises. The records shall show the cost of food, supported by invoices; receipts from sale of food supported by cash register tape or guest checks; rental paid for the privilege and equipment used; the name and address, social security number and salary paid to each employee; and other expenditures.

[40 Pa. Code § 5.82(c)].

To summarize, Goodwill Hose Co., is not permitted to sell alcohol at the premises while the liquor license is in safekeeping. Goodwill Hose Co. may engage a management company to operate your kitchen and bar, as long as the club maintains an active license, and the management company does not have a pecuniary interest in the license. Goodwill Hose Co. may engage a concessionaire

to operate your kitchen, as long as the club maintains an active license, and club employees operate the bar service.

Should you have any other further questions or concerns regarding this matter, please do not hesitate to 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,
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