

October 23, 2014

Marcus Riddell

RE: Merger of Clubs

Dear Mr. Riddell:

ISSUE: This office received your e-mail dated September 12, 2014, wherein you ask a follow-up question to the scenario that you posed in your e-mail dated August 6, 2014. In your August 6, 2014 e-mail, you indicated that you are leading the merger of two (2) fire companies in your community and that both of the fire companies hold club licenses. Additionally, you noted that you may keep each of the fire company charters active for five (5) years for grant purposes. Presently, you ask what the process would be if the fire companies decide to have only one (1) home association.

OPINION: As you are aware, the Board will not dual-license a location, absent specific statutory authority. Thus, only one (1) license may be in effect at one (1) time at any particular location. Therefore, even though you may keep each of the fire company charters active for five (5) years, you would not be able to maintain two (2) club licenses at the same location.

However, if both licenses are maintained at their respective premises, it would be possible for one (1) home association to hold the licenses, provided that both entities continue to meet the definition of a “club.” The Liquor Code defines a “club” as follows:

‘Club’ shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in continuous existence and operation for at least one year, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it

appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment. The term includes a privately-owned private golf course.

[47 P.S. § 1-102].

Additionally, please note that if the home association intends to hold both licenses at their current locations, you may need to transfer the club licenses to the home association, provided that the home association does not presently hold either license. Likewise, if the location of the licensed premises changes, then you would need to transfer the license to the new location.

However, if the two (2) home associations are part of a merger as contemplated in Santa Fe Energy Resources Inc. v. Manners, 635 A.2d 648 (Pa. Super. 1993), and the license remains at the same location as the liquor license that is retained, there would be no need to file for a transfer. Rather, you would simply need to file a Change of Officers form at the time of license renewal, should the officers change as a result of the merger.

Please note that the Change of Officer form and transfer application are available from the Board's Bureau of Licensing ("Licensing") at (717) 783-8250, or on-line at the Board's website, www.lcb.state.pa.us, by clicking on "Licensees," then "Applications/Forms Overview," then "Forms," and then selecting the appropriate form.

Be advised that section 5.81 of the Board's Regulations [40 Pa. Code § 5.81] requires a club licensee to adhere to the provisions of its constitution and/or bylaws. Therefore, if the club's constitution and/or bylaws prohibit your proposed transfer of the licenses to the home association, your failure to adhere to the constitution and/or bylaws may result in the issuance of a citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

Finally, assuming that only one (1) license is utilized in your present scenario, the other license may be submitted for safekeeping and eventually transferred to another entity. Be advised that a club license may be kept in safekeeping for one (1) year or upon proper application to the Board, for one (1) additional year thereafter. [47 P.S. § 4-474]. No further extension of the safekeeping period is permissible.

Should you have any additional questions, 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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