January 12, 2015

Robert D. Mallinger

RE: Owner/Manager Liquor License Civil and Criminal Liability

Dear Mr. Mallinger:

ISSUE: This is in response to your e-mail of December 27, 2014 wherein you ask for more information from this office regarding potential civil and criminal liability for an owner/manager when an employee serves a visibly intoxicated person who subsequently harms himself or others.

Pennsylvania Liquor Control Board ("Board") records indicate that you are the Manager/Steward of 600 William Penn Place Assoc. Master Tenant LP & Kimpton Hotel and Restaurant Group LLC t/a Café Monaco Pittsburgh, which holds Hotel Liquor License No. H-6414 (LID 69678) for the premises located at 435 Sixth Avenue, Pittsburgh, Pennsylvania.

OPINION: Initially, with regard to the Commonwealth, be advised that licensees are strictly liable for violations of the Liquor Code and its attendant laws and regulations that occur on the licensed premises. Pennsylvania Liquor Control Board v. TLK, Inc., 544 A.2d 931 (Pa. 1988). Section 493 of the Liquor Code specifically prohibits licensees from selling, furnishing or giving alcohol, and from permitting the sale, furnishing or giving of alcohol, to minors or visibly intoxicated persons. [47 P.S. § 4-493(1)].

With regard to licensee liability to third parties, section 497 of the Liquor Code specifically provides that no licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated. [47 P.S. § 4-497].

Therefore, a licensee may be liable and may be subject to fines and/or license suspension or revocation when alcohol is sold, furnished or given to minors or visibly intoxicated persons on the licensed premises, regardless of whether the

alcohol is supplied by the licensee or a third party and whether or not the licensee had knowledge of the incident. [47 P.S. § 4-493(1)]. A licensee may also be liable to third parties for injuries inflicted by customers off the licensed premises, where the customer was served alcohol while visibly intoxicated.

With regard to your specific question regarding the civil and/or criminal liability of the Owner/Manager generally, whereby homes, savings or other personal interests could be in jeopardy, you are advised to contact a private attorney well-versed in liquor liability law, as this office cannot provide information on potential civil liability arising from the actions taken by licensees.

Should you have any further questions or concerns, 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. 14-655