

January 15, 2015

Jeffrey K. Millin, Esquire
Shafer Law Firm
10744 State Highway 18
Conneaut Lake, PA 16316

Re: Workers' Comp Insurance Requiring New EIN for VFD Club

Dear Attorney Millin:

ISSUE: This is in response to your e-mail sent December 31, 2014, wherein you advise that you represent several volunteer fire departments ("VFD") that hold catering club licenses. You advise that the workers' compensation carriers are requiring that the VFD be separate from the club/restaurant to enable the purchase of workers' compensation coverage. It is your understanding that this would require a separate entity and employer identification number ("EIN") for the VFDs. You would like to accommodate this requirement and establish new entities, with new EINs, without going through a formal license transfer. You have written this office for guidance.

OPINION: The Liquor Code provides that it is unlawful for anyone other than the licensed entity to hold a pecuniary interest in the liquor license. Therefore, if the VFD is set up as an entity that is separate from the club/restaurant, it cannot allow another entity to have an unlawful pecuniary interest in its liquor 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:

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

3. 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)].

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. Therefore, it may be possible for the VFD to enter into an agreement with another entity to serve as a management company for the operation of the club/restaurant. It is unknown if this level of separation will satisfy your workers’ compensation carrier.

Other than the use of a management agreement, the VFD would have to transfer its license to another club if it will no longer hold the club liquor license in question. As you may be aware, section 102 of the Liquor Code defines a club as the following:

[A]ny 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....

[47 P.S. § 1-102 (emphasis added)]. The Liquor Code does not give the Board any discretion to disregard these requirements under any circumstances. Therefore, the VFD may only transfer its license to another entity that meets the definition of a club as that term is defined in section 102.

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

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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. 15-004