

January 29, 2015

David L. Horvath, Esquire  
Newman Williams Mishkin Corveleyn Wolfe & Fareri, P.C.  
712 Monroe Street  
P.O. Box 511  
Stroudsburg, PA 18360-0511

**Re: Distributor/Importing Distributor Employment**

Dear Attorney Horvath:

ISSUE: This is in response to your e-mail of January 15, 2015, wherein you advise that your client is the sole shareholder and manager of a corporation that holds a distributor (“D”) license. You advise that your client wishes to transfer forty-nine percent (49%) ownership of the licensed corporation to his wife, who will then act as the sole corporate officer and the manager for the business holding the D license. You advise that your client will then no longer be an employee or a manager, at which point he would like to pursue employment with another D or importing distributor (“ID”) licensee.

You are aware that section 493(11) of the Liquor Code prohibits any officer, servant, agent or employee of a D license from being employed by another D or ID licensee. You assert, however, that the Liquor Code does not explicitly prohibit a fifty-one percent (51%) shareholder, who is not an officer, servant, agent, or employee, from being so employed. You believe that after your client’s wife becomes the “sole corporate officer” of the D license, your client will be free to seek employment from another D or ID, but not employment from another class of licensee, such as a retail licensee or a manufacturer.

You also note that your client is the sole shareholder in a separate and distinct corporation that owns the real estate that houses the D’s licensed premises. The D licensee pays rent to the real estate corporation. You ask if there is any prohibition which would prevent a person with a financial interest in a D license as a landlord from being employed by another D or ID licensee.

OPINION: Section 493(11) provides, in pertinent part, that it shall be unlawful:

For any hotel, restaurant or club liquor licensee, or any malt or brewed beverage licensee, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any distributor, importing distributor, manufacturer, importer or vendor licensee or any out of State manufacturer. **It shall also be unlawful for any distributor or importing distributor, or any officer, servant, agent or employe of such licensee to be at the same time employed, directly or indirectly, by any other distributor, importing distributor, manufacturer, importer, vendor, out of State manufacturer, hotel restaurant, malt or brewed beverage licensee, or club liquor licensee...**For the purposes of this subsection, **an officer, servant, agent or employe of a licensee or manufacturer is an individual who has either an ownership interest in the licensee or manufacturer or who receives compensation for his or her work on behalf of the licensee or manufacturer.**

[47 P.S. § 4-493(11) (emphasis added)].

This office does not agree with your assertion that your client can obtain employment from another D or ID after his wife becomes the “sole corporate officer” of the D license, while retaining fifty-one percent (51%) ownership of the licensed corporation. Although your client may not formally serve as an officer of the corporation, as long as he retains an ownership interest in the D license, he meets the statutory definition of “officer, servant, agent or employe.” Therefore, if your client wishes to obtain employment with another D or ID, he may no longer hold an ownership interest in the licensed corporation.

With regard to the real estate issue, if your client were merely the landlord for the D, with no ownership interest in the D license whatsoever, there is nothing in the Liquor Code that would prohibit him from working for another D or ID as an employee.

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

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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. 15-012