

January 30, 2015

John Pannizzo

VIA E-MAIL : pizza@acsworld.com

RE: License Divestiture by Elected Public Official

Dear Mr. Pannizzo:

ISSUE: This office is in receipt of your e-mail dated January 20, 2015, followed by a telephone conversation on January 22, 2015, in which you asked whether you would have to divest your interests in any of the three (3) licenses you hold in the event that you successfully obtain the elected position of Magisterial District Justice in Mifflin County, your county of residence. If so, you ask about the timing of such a divestiture.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that John Pannizzo, trading as Downtown OIP & Grille, holds Eating Place Retail Dispenser License No. E-3163 (LID 39309) for use at the premises located at 24-26 East Market Street, Lewistown, Mifflin County, Pennsylvania. You are the Board-approved manager of this licensed premises. Furthermore, you are a member of the entity known as J.P. Edwards Mgmt, LLC, which holds Restaurant Liquor License No. R-17050 (LID 50696) for use at the premises located at 203 South Logan Boulevard, Burnham, Mifflin County, Pennsylvania. Finally, you are a member of the entity known as AAJP, LLC, which holds Restaurant Liquor License No. R-10848 (LID 64610) for use at the premises located at 718 North Lehigh Avenue, Sayre, Bradford County, Pennsylvania.

OPINION: Section 401(a) of the Liquor Code provides that:

no person who holds any public office which involves the duty to enforce any of the penal laws of the United States, or of the Commonwealth of Pennsylvania, or any penal ordinance or resolution of any political subdivision of this Commonwealth, can

be issued a restaurant license, nor may such a person have any interest, directly or indirectly, in any such license.

[47 P.S. § 4-401(a)].

The Liquor Code specifically notes that this prohibition applies to magisterial district judges, or anyone who can impose a criminal sentence. [Id.].

Section 437(d) of the Liquor Code imposes the same prohibition in the case of a retail dispenser license, although there is an exemption if the licensed premises are located outside the jurisdiction of the individual in question. [47 P.S. § 4-437(d)].

Assuming you are duly elected and hold the position of magisterial district judge, you state that you will have arrest powers or the ability to impose a criminal sentence not only in your home district but in any other district in Mifflin County. Therefore, you would be required to divest your interests in the two (2) Mifflin County licenses.

The above-noted exemption would apply to the Bradford County license in which you currently hold an interest, such that you would not be required to divest your interest in that license since the elected position has no jurisdiction in Bradford County. [Id.]. Please note, however, that you may not be the manager of the Bradford County licensee without explicit Board approval, which approval would hinge on various factors including but not limited to your ability to devote full time and attention to the business. [40 Pa. Code § 5.23(a)].

Finally, you asked at what point in the process you would be required to divest the noted interests. The Liquor Code prohibits a person “who holds” the office from having an interest in the relevant licenses; therefore, you would have to divest the interest before you officially hold the office of magisterial district judge. As a practical matter, it is likely that you will need to divest after you have the election results but before you are sworn into office.

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, 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. 15-0019