

January 30, 2015

Patrick Catalone

VIA E-MAIL: rubberink@windstream.net

RE: Liquor License as Collateral

Dear Mr. Catalone:

ISSUE: This is in response to your e-mail dated January 28, 2015, in which you ask whether there is a way to use your liquor license as collateral in an owner-financed sale of your business. You also ask if there is another way to structure the sale while maintaining ownership of the license.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that T&H, Inc., trading as Merlin’s, is the holder of Restaurant Liquor License No, R-14848 (LID 41163) for use at the premises located at 626 South Michael Road, St. Mary’s, Pennsylvania.

OPINION: For your general information, please be advised that, while the license is a privilege between the Board and the licensee, it is property between the licensee and a third party. [47 P.S. § 4-468(d)]. Because the license is considered property as between a licensee and a creditor/lender, a licensee may use the license as collateral for a loan. The creditor/lender may perfect a security interest in the license just as it would with any other type of tangible property.

However, because a license is not recognized as property as between the Board and a licensee, the Board does not recognize security interest in licenses that it issues. Therefore, while a license issued by the Board may be subject to a security interest, the Board recognizes only the named licensee(s) as having an interest therein.

Until the Board receives either a Court Order, a Writ of Execution together with a Sheriff’s Bill of Sale, or a sworn affidavit executed by counsel representing that the licensee is subject to an agreement which authorizes a third party to act on behalf of a licensee in the event of a default, that licensee is in default, that all necessary and required procedures have been followed pursuant to any underlying agreements and all applicable laws, the named licensee(s) retains its privilege in the license, including the right to transfer the license to another.

This office cannot provide you with more specific legal advice regarding the sale of your business; rather, you are strongly encouraged to seek assistance for this commercial undertaking from private counsel experienced in Pennsylvania liquor law.

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. 15-020