

February 5, 2015

Patrick J. Kazmerski, Sr.

RE: Club Membership for Convicted Felon

Dear Mr. Kazmerski:

ISSUE: Your e-mail of January 17, 2015 inquires whether a private club can accept the membership of a person of ill repute or a convicted felon, and whether a rule concerning ill repute must be included in the club's written bylaws.

Pennsylvania Liquor Control Board ("Board") records indicate that the Lithuanian Club holds Club Liquor License No. C-2799 (LID 1396) for use by it at premises located at 1135 Chemung Street, Coal Township, Pennsylvania.

OPINION: Neither the Liquor Code nor the Board's Regulations prohibit persons of ill repute or convicted felons from membership in a licensed club, nor require that a club licensee's constitution or bylaws include any provision regarding reputation or convictions of members.

Until 2002, the Liquor Code included a provision that effectively prevented a licensee from **employing** any person with a criminal conviction history. It is now generally permissible for a licensee to employ someone with a criminal record, unless that criminal record involves prostitution. The Board may still consider criminal records of **licensees, or officers, directors, managers, or stockholders** of licensees, because sections 404 and 437 of the Liquor Code require that licensees be persons of good repute, and the Board's Regulations specify that criminal convictions impact a person's reputation. [47 P.S. §§ 4-404, 4-437; 40 Pa. Code §§ 1.5, 5.23]. Sections 404 and 437 of the Liquor Code also permit the Board to refuse a license to persons with a felony conviction in the five (5) years prior to their application. [Id.]. Divestiture of such persons may be required. [40 Pa. Code § 17.41]. However, the reputation and criminal records of individual **members** of a club are not considerations.

Club licensees must adhere to the provisions of their constitution and bylaws. [40 Pa. Code § 5.81]. However, nothing in the Liquor Code or the Board's

Patrick J. Kazmerski, Sr.

February 5, 2015

Page 2

Regulations requires that a club licensee's constitution or bylaws include any provision regarding reputation or convictions of members.

Finally, you indicate that the association is currently re-writing its bylaws and has drafted a provision stating that prior background information is not relevant for membership. Although you do not pose any specific question regarding this piece of information, please be advised that the definition of "club" in the Liquor Code includes a requirement that members be admitted by written application, investigation and ballot. [47 P.S. § 1-102]. However, nothing in the Liquor Code or the Board's Regulations specifies what shall be included in the required investigation.

Please do not hesitate to contact this office should you have additional questions.

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. 15-022