

March 27, 2015

T B

Via Email: [auntiebea1@gmail.com](mailto:auntiebea1@gmail.com)

**RE:** DUIs

Dear T B:

ISSUE: This office is in receipt of your email of January 13, 2015, wherein you advise that you are a board member of a Pennsylvania club. It is assumed that your club is licensed by the Pennsylvania Liquor Control Board (“Board”). You advise that your bartender was recently arrested for driving under the influence of alcohol (“DUI”).

OPINION: You pose several questions. They will be addressed below.

- 1) Is it illegal for a bartender to remain on premises and drink after the bartender’s shift has ended and what could happen to the club?

Please be advised that an employee who remains on the licensed premises after his or her shift has ended and who is no longer actively working would be considered a patron of the licensed premises. Licensees may not provide alcoholic beverages to patrons outside of the licensee’s hours of legal operation. [47 P.S. § 4-493(16)].

Organizations which hold club liquor licenses may be open for the sale of liquor and malt or brewed beverages daily from 7:00 a.m. until 3:00 a.m. the following day. [47 P.S. § 4-406(a)]. No club licensee may sell liquor or malt or brewed beverages between the hours of 3:00 a.m. and 7:00 a.m. on any day. [47 P.S. § 4-406(a)(4); 4-492(7)]. Patrons are required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages not later than one-half (½) hour after the time the licensee is required to cease serving alcohol. [47 P.S. § 4-499(a)].

Thus, an employee of your club may purchase<sup>1</sup> and be served an alcoholic beverage prior to the end of his or her shift so long as it is during the club's hours of legal operation as stated above. The employee may then consume that alcoholic beverage between the hours of 3:00 a.m. until 3:30 a.m., but must vacate that part of the club's premises habitually used for the serving of liquor or malt or brewed beverages not later than one-half (1/2) hour after the time your club is required to cease serving alcohol (i.e., 3:30 a.m.). A club may be subject to citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("BLCE") if the club has served patrons after 3:00 a.m. or permitted patrons to remain on the premises after 3:30 a.m.

Please be aware that section 493(28) of the Liquor Code makes it unlawful for "any licensee, his servants, agents or employees, to consume liquor or malt or brewed beverages while tending bar or otherwise serving liquor or malt or brewed beverages." [47 P.S. § 4-493(28)]. A licensee's servant, agent or employee who drinks while tending bar or otherwise serving liquor or malt or brewed beverages may be charged criminally.

2) What is the club's liability for the bartender's DUI?

This office's authority to issue Advisory Opinions is set forth in section 211.1 of the Liquor Code, which provides that "Upon written request by a licensee, the board or its counsel shall issue a legal opinion regarding any subject matter relating to *this act* or any regulation promulgated pursuant to it. This legal opinion shall be binding on the enforcement bureau." [47 P.S. § 2-211.1 (emphasis added)]. Because of this statute, this office is only permitted to render legal opinions regarding the Liquor Code or the Board's Regulations. With regard to your specific question regarding the civil liability of your club, you are advised to contact a private attorney well-versed in liquor liability law, as this office cannot provide information on potential civil liability to third parties arising from the actions taken by licensees.

3) Is it advisable to keep the bartender as an employee?

Please note that the Board may 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

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<sup>1</sup> This assumes the employee is also a club member.

P.S. §§ 4-404, 4-437; 40 Pa. Code §§ 1.5]. 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. Divestiture of such persons may be required. [40 Pa. Code § 17.41]. However, the criminal records of mere employees are generally not a consideration, although there might be occasions when it could be a factor in the renewal of the license.

Additionally, section 5.81 of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.81] requires a club licensee to adhere to the provisions of its constitution and/or bylaws. Thus, if your constitution and/or bylaws mandate the termination of the employee in question, you must follow your constitution and/or bylaws. If you fail to do so, your club may be subject to citation by BLCE.

Finally, as to the club's civil liability for keeping the bartender as an employee, you would need to discuss this issue with a private attorney.

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  
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LCB Advisory Opinion No. 15-122