

June 11, 2015

Dan Wozniak

VIA E-MAIL: danwozniak@comcast.net

RE: Club License Questions

Dear Mr. Wozniak:

ISSUE: This office is in receipt of your e-mail correspondences of March 16, and May 9, 2015, wherein you pose questions regarding a club license. In the former, you inquire about the procedure to change the bylaws of a club and if the Pennsylvania Liquor Control Board (“Board”) must approve the same. In the latter email, you add a question as to the number of meetings required for voting on bylaws. You also inquire if your license can be used by local firemen for a function such as a bazaar or if they would have to get their own special occasion permit (“SOP”).

OPINION: As you seem to be aware, section 102 of the Liquor Code defines a club as follows:

'Club' shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in continuous existence and operation for at least one year, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it appears that the charter is not in possession of the original incorporators or their direct or legitimate successors. The club shall

hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment. The term includes a privately-owned private golf course.

[47 P. S. § 1-102].

Section 5.81 of the Board's Regulations requires a club licensee to adhere to the provisions of its constitution and/or bylaws. [40 Pa. Code § 5.81]. Failure of a club to adhere to its constitution and/or bylaws may result in the issuance of a citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), which is the entity that is tasked with enforcing the Liquor Code. If a club does not meet the statutory requirements or comply with the aforementioned, it would no longer be permitted to be licensed to sell alcohol.

As to your questions regarding provisions within your club's bylaws, this office is not authorized to impose or to approve specific provisions of your club's constitution, bylaws, or charters. As long as your club meets the described requirements and otherwise complies with the Liquor Code and Board Regulations, it would be able to maintain its club liquor license.

In regard to allowing local firemen to use your club license for a function, please be advised that a liquor license is not an entity that can be shared/borrowed as you described; it is a privilege that is extended to a specific licensee with delineated parameters of use. [47 P.S. 4-403]. For operations/functions on premises, your club is required to abide by section 406 of the Liquor Code that restricts the sale of any liquor or malt or brewed beverages to members of the club. [47 P.S. 4-406(a)]. An exception exists to this general rule for catering club licensees, specifically allowing patrons of a catering club to purchase alcoholic beverages from the club even if they are nonmembers, as long as they are part of a catered event. A catered event is one involving the furnishing of liquor or malt or brewed

beverages, or both, to be served with food prepared on the premises or brought on the premises already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement, made at least twenty-four (24) hours in advance of the time of the function, and which is paid for by nonmembers. [40 Pa. Code § 5.82(a)]

Further, section 3.52 of the Board's Regulations prohibits a licensee from permitting other persons to operate another business on the licensed premises. [40 Pa. Code § 3.52]. Also, the Liquor Code prohibits anyone other than the named licensee from having a pecuniary interest in a licensed business. [47 P.S. § 4-404]. Section 1.1 of the Board's Regulations defines "pecuniary interest" as "an interest that sounds in the attributes of proprietorship." [40 Pa. Code § 1.1].

Although the fire company may not use your license, assuming that the fire company is not the licensee or the premises is different from the proposed premises, it may, as one of the "eligible entities" defined in section 102 of the Liquor Code [47 P.S. § 1-102], apply for and obtain a special occasion permit ("SOP"), which authorizes the holder to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises on any day for which the SOP is issued. [47 P.S. § 4-408.4(k)]. The purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. [47 P.S. § 4-408.4(m)]. An SOP may be used in conjunction with activities and events involving other entities; however, no one other than the holder of the SOP may acquire a pecuniary interest therein. [*Id.*]. Please note that, generally, SOPs may not be used upon premises which hold liquor licenses. An SOP can, however, be issued for premises already licensed by the Board if the entity owning the premises is a volunteer fire company, rescue company, or ambulance squad. [47 P.S. § 4-408.4(1)].

Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to again 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

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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. 15-255