

June 12, 2015

Michael Agresti, Esquire
The Agresti Law Firm
17 West 10th Street
Erie, PA 16501
VIA E-MAIL: magresti@agrestilaw.com

Re: Effect of Safekeeping on a License

Dear Mr. Agresti:

ISSUE: This is in response to your e-mail of May 20, 2015, which is a follow up to this office's Advisory Opinion 15-137 wherein this office advised your client, Meghan Moon, that she could not lawfully hold a distributor license and be employed as a bartender at a licensed establishment, as that would violate the provisions of section 493(11) of the Liquor Code [47 P.S. § 4-493(11)]. In response to that advice, Ms. Moon placed the distributor license held by Huskies Beer Distributor, LLC, into safekeeping, but continued to work as a bartender. In a telephone call with this office on May 20, 2015, you advised that you were informed by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") that placing the license in safekeeping would not protect your client from a citation for violating the Liquor Code if she chose to continue working as a bartender.

In your e-mail of May 20, 2015, you ask for an advisory opinion on the issue of whether Ms. Moon can work as a bartender in a licensed establishment as long her distributor license remains in safekeeping. In support of your position that Ms. Moon can work as a bartender in a licensed establishment while her distributor license remains in safekeeping, you cite to 40 Pa. Code § 7.31 and the case of Pennsylvania State Police, Bureau of Liquor Control Enforcement v. D'Angio, Inc., t/a/d/b/a Sammy's Hide-A-Way, 666 A.2d 1114 (Pa. Cmwlth. 1995), *appeal denied*, 676 A.2d 1200 (Pa. 1996).

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that Huskies Beer Distributor, LLC holds Distributor License No. D-2947 (LID

66867) for premises located at 6835 Buffalo Road, Harborcreek, Pennsylvania. Records further indicate that the license has been placed into safekeeping.

OPINION: Section 493(11) provides that it shall be unlawful:

For any hotel, restaurant or club liquor licensee, or any malt or brewed beverage licensee, or any officer, servant, agent or employe of such licensee, to be at the same time employed, directly or indirectly, by any distributor, importing distributor, manufacturer, importer or vendor licensee or any out of State manufacturer. It shall also be unlawful **for any distributor or importing distributor, or any officer, servant, agent or employe of such licensee to be at the same time employed, directly or indirectly, by any other distributor, importing distributor, manufacturer, importer, vendor, out of State manufacturer, hotel, restaurant, malt or brewed beverage licensee, or club liquor licensee. . . .** For the purposes of this subsection, **an officer, servant, agent or employe of a licensee or manufacturer is an individual who has either an ownership interest in the licensee or manufacturer or who receives compensation for his or her work on behalf of the licensee or manufacturer.**

[47 P.S. § 4-493(11) (emphasis added)]. In a telephone call to this office, you were advised by this office that even though the distributor license is in safekeeping, your client retained an ownership interest in the license and therefore she would be in violation of this section if she were to work as a bartender. The only way Ms. Moon could work for a retail licensee without violating section 493(11) would be for her to either sell her interest in Huskies Beer Distributor LLC or for her to transfer the distributor license to another entity.

With regard to the legal authorities you submitted, please note that citations under the Liquor Code are issued by the Bureau and not the Board. The Bureau is charged with the duty of enforcing the Liquor Code and the Board's Regulations. The Board acts as an appellate body if a licensee or the Bureau appeals from an adverse ruling on a citation matter. Therefore, because of its role as an appellate body in citation cases, it would be inappropriate for the Board to provide legal analysis related to any pending citation or violation.

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once again contact this office.

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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. 15-257