

July 13, 2015

John Rook, PGA  
Head Golf Professional  
Kane Country Club  
**VIA E-MAIL:** [kccheadpro@hotmail.com](mailto:kccheadpro@hotmail.com)

**RE: Leasing Kitchen and Food Service**

Dear Mr. Rook:

ISSUE: Your correspondence of June 12, 2015 states that the Kane Country Club (“Kane”) is in the process of structuring a food service operation on the licensed property. This operation entails the leasing of the kitchen for one thousand dollars (\$1,000.00) per month to Kelly’s Restaurant. Kelly’s Restaurant will be solely responsible for the staffing of the kitchen, as well as the purchasing and profit of inventory related to the food service operation. Kelly’s Restaurant will be acting as a separate entity from that of Kane. Kane will continue to be solely responsible for the staffing, purchasing and profiting of all alcohol-related sales.

Kane inquires as to what steps are necessary to ensure that it remains compliant with any applicable liquor laws.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Kane holds Privately-owned Public Golf Course Liquor License No. PGR-347 (LID 67360) for use by it at premises located at 6654 Route 6, Kane, Pennsylvania.

OPINION: It is permissible, under certain conditions, for a licensee to enter into an agreement with a management company to operate the food service facilities of the restaurant licensee, including a privately-owned public golf course restaurant licensee. Section 102 of the Liquor Code [47 P.S. § 1-102] defines “management company” as “any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises.” The Board has traditionally permitted management companies to

operate licensed premises on behalf of licensee, provided that those companies do not have an unlawful pecuniary interest in the license as described above.

Agreements between licensees and management companies are reviewed by the Board's Bureau of Licensing on a case-by-case basis to ensure that no unlawful pecuniary interests exist in such agreements. A "pecuniary interest" is defined in section 1.1 of the Board's Regulations as follows:

An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business or when control is exercised by one or more of the following:

- (i) Employing a majority of the employees of the licensee.
- (ii) Independently making day-to-day decisions about the operation of the business.
- (iii) Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1].

Provided the management relationship, as evidenced by the management agreement, is approved by the Board, the management company could then lawfully manage the food service business in part of the licensed premises as proposed, but it must be Kane, and not the management company, which sells the food to patrons.

Be advised that if a licensed club does not sell food, it may permit a food concession, which sells food directly to patrons, to be operated by a person who is not an officer or employee of the club. [40 Pa. Code § 5.82(a)]. However, this provision does not apply to a privately-owned public golf course restaurant license. This privilege is limited to the holders of public venue, club or catering club, municipal golf course, private-owned private golf club or performing arts facility licenses. [47 P.S. §§ 1-102, 4-412, 4-413, 4-461; 40 Pa. Code §§ 5.81, 5.82].

Be advised that the operation of another business on the licensed premises by other persons is prohibited by section 3.52(a) of the Board's Regulations. [40 Pa. Code

§ 3.52(a)]. Accordingly, it would not be permissible for a third party to sell food on Kane's licensed premises on its own behalf.

As this is a significant commercial undertaking, you may wish to consult private counsel experienced in Pennsylvania liquor law before proceeding further.

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

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