

August 12, 2015

Edward B. McHugh, Esq.  
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Constitution Place  
325 Chestnut Street, Suite 713A  
Philadelphia, PA 19106

**RE: Use of Third Party Management Company**

Dear Mr. McHugh:

ISSUE: This correspondence is in response to your e-mail of July 21, 2015, wherein you request an advisory opinion on behalf of Local Union No. 401 of the International Association of Bridge (“Licensee”). Specifically, you ask whether it would be permissible for Licensee to contract with a third party management company to be the exclusive provider of food and nonalcoholic beverages at prearranged catered affairs held at its licensed premises and to manage the bar and service of alcoholic beverage on behalf of Licensee. You explain that the third party management company would retain one hundred percent (100%) of the proceeds from the sale of food and nonalcoholic beverages, while Licensee would retain one hundred percent (100%) of the proceeds from the sale of alcoholic beverages. You further explain that Licensee would retain ultimate authority to operate the licensed business.

The Pennsylvania Liquor Control Board’s (“Board”) records reflect that Licensee holds Catering Club Liquor License No. CC-3320 (LID 26420) for use at the premises located at 11600 Norcom Road, Philadelphia, Pennsylvania.

OPINION: As you are likely already aware, the Liquor Code prohibits the leasing or assignment of a license. [47 P.S. § 4-468(a)]. Moreover, the Liquor Code prohibits anyone other than the named licensee from having a pecuniary interest in the operation of 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. 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; see also Appeal of E-J Westside Inn Corp., 449 A.2d 93 (Pa. Cmwlth. 1982)].

However, the Liquor Code and the Board's Regulations do permit the use of management companies, subject to certain conditions. Section 3.141 of the Board's Regulations provides as follows:

- (a) A licensee may contract with another person to manage its licensed premises.
- (b) A management contract must reserve to the licensee the capability to direct its own business.
- (c) A management contract must be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.
- (d) A management contract may not give a pecuniary interest to a management company.

[40 Pa. Code § 3.141]. Section 3.1 of the Board's Regulations defines a "management contract" as "[a]n agreement between a licensee and a management company to operate, manage, or supervise all or part of the operating of the licensed premises." [40 Pa. Code § 3.141]. Similarly, section 102 of the Liquor Code defines a "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 business.” [47 P.S. § 1-102].

The procedural aspects of management contracts are governed by sections 3.142 and 3.143 of the Board’s Regulations [40 Pa. Code §§ 3.142- 3.143]. Section 3.142 provides as follows:

- (a) Current licensees or applicants for licenses that have management contracts shall file with the Board’s Bureau of Licensing [(“Licensing”)] on forms supplied by Licensing, the identity of all persons who are parties to the management contract.
- (b) Current licensees or applicants for licenses that enter into, modify or terminate management contracts shall, within 30 days, file a written notice with the Board that this has occurred. The changes shall be reported on forms which will be furnished upon request by the Board.
- (c) Licensees filing notice of the establishment or modification of a management contract shall pay a fee of \$350. No fee is payable when a licensee gives notice to the Board that a management contract has been terminated. Likewise, no fee is required when a licensee is notifying the Board of a nonsubstantive change to an existing management contract, such as the correction of a typographical error, the providing of a page or document inadvertently omitted from an earlier submission, or a name, address or contact information change as to one of the parties.

[40 Pa. Code § 3.142]. Section 3.143 of the Board’s Regulations provides that:

- (a) The Board will notify the current licensee or applicant, in writing, of the Board’s decision to either approve or refuse the involvement of a person providing services as a management company.
- (b) The Board may refuse the involvement of a person providing services as a management company. The Board’s refusal may be based upon the following:

- (1) The creation by the management contract of a pecuniary interest in the license.
  - (2) Facts upon which the Board could refuse a person's involvement in the license which may include reasons specified in section 4-470(a.1) of the Liquor Code (47 P. S. § 4-470(a.1)) such as reputation, criminal history, and current or prior involvement in other licenses.
- (c) The licensee's use of a management company will not affect the licensee's responsibility for violations of the Liquor Code or this title.

[40 Pa. Code § 3.143].

While the scenario that you describe in your e-mail would appear to generally comply with the requirements applicable to management companies, please be advised that the decision of whether to approve a particular management agreement will be made by Licensing after receiving such agreement to review. Further, Licensing's decision will be based on the particular provisions contained in the agreement.

If you have any additional questions regarding this matter, 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 BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

Edward B. McHugh, Esq.  
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cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
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LCB Advisory Opinion No. 15-342