

August 21, 2015

Katherine Rightmyer O'Brien, Esquire

**RE: Club License Question**

Dear Ms. Rightmyer O'Brien:

ISSUE: This office is in receipt of your e-mail dated July 20, 2015, wherein you advise that you represent the Shoemakersville Fire Company No. 1 ("the Fire Company"). The Fire Company's current manager wishes to resign from his position and wants his name removed from the license. No replacement has been found to fill the position of manager. You pose three (3) questions pertaining to the operations of the Fire Company.

You first ask if, with no manager in place, the Fire Company must cease sales and service of alcoholic beverages. Second, you ask if the Fire Company's license must be surrendered to the Pennsylvania Liquor Control Board ("Board") if no one fills the position of manager within fifteen (15) days. Finally, you ask if there is a "grace period" which would allow the Fire Company to continue to operate with no manager until the position is filled.

Board records indicate that the Shoemakersville Fire Company No. 1 holds Catering Club Liquor License No. CC-5114 (LID 3824) for use by it at premises located at 300 Church Avenue, Shoemakersville, Pennsylvania.

OPINION: Section 5.23(a) of the Board's Regulations provides that the operation of a licensed business requires a manager, and that a licensee must appoint an individual as manager for each licensed establishment, with this manager required to devote full time and attention to the licensed business. [40 Pa. Code § 5.23(a)]. A licensed establishment may not operate without an appointed manager. To the extent that it may assist the the Fire Company in its search for a new manager, please note that a club manager or steward, while required to devote full time and

attention to the licensed business, may also engage in employment outside his duties as manager or steward except as provided in section 4-493(11) of the Liquor Code (47 P.S. § 4-493(11)). [40 Pa. Code § 5.23(i)].

Therefore, in order to continue to sell and serve alcoholic beverages, the Fire Company must appoint a manager who is able to devote full time and attention to the licensed business. Although there is no “grace period” during which a licensee may operate without a manager, in the event of the illness or extended vacation of a licensee, the Board may approve the appointment of a manager for a period not to exceed thirty (30) days. In case of emergency, the approval may be extended upon written request of the licensee. [40 Pa. Code § 5.23(g)]. Also, a licensee, without Board approval, may designate one of its employees as the person in charge of the business for a period of time not to exceed fifteen (15) calendar days, when the manager is absent from the licensed premises. [40 Pa. Code § 5.23(h)]. However, because the Fire Company’s manager wishes to resign, it does not appear that either of these exceptions would apply.

Without a manager, the Fire Company may not operate. When a club-licensed establishment is not in operation for fifteen (15) days, the license and the Wholesale Purchase Permit Card must be surrendered to the Board for safekeeping. [47 P.S. § 4-474; 40 Pa. Code § 7.31(a)]. A club license may be kept in safekeeping for one (1) year or upon proper application to the Board, for one (1) additional year thereafter. [Id.].

While section 5.91 of the Board’s Regulations requires a corporation, association, or other Board-licensed entity, having officers, or directors or stockholders, to report a change in such officers, directors, or stockholders within fifteen (15) days [40 Pa. Code § 5.91(a)], this does not apply to club licensees. Club licensees are not required to report a change in officers or manager/steward until its application to renew or validate the license is submitted. [40 Pa. Code § 5.91(c)]. If there are new officers, directors, or manager/steward of the club since the last renewal application was filed, the club licensee is required to file a Request for Criminal Record Check (PLCB Form E-2314) with the renewal and change of officers form. [40 Pa. Code § 5.91].

Please be further advised that the Board’s Regulations require that the holder of a club or catering club license conform to its constitution and bylaws. [40 Pa. Code § 5.81]. Thus, in addition to the foregoing, the Fire Company must adhere to any

applicable provision in its constitution and bylaws concerning the appointment of a new manager.

To summarize, the Fire Company must have a manager appointed in order to continue its operations; however, it does not need to report the change in manager to the Board until submission of its next renewal or validation application. In addition, the Fire Company must adhere to its constitution or bylaws throughout the process of appointing a new manager.

Please do not hesitate to contact this office should you have additional questions.

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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