

September 17, 2015

Karl Geci, Esquire  
Fernan Geci Law Office P.C.  
35 North Broad Street  
Ridgway, PA 15853  
**VIA E-MAIL:** [karlg1@windstream.net](mailto:karlg1@windstream.net)

**Re: Intermunicipal Transfer of License**

Dear Mr. Geci:

ISSUE: This is in response to your e-mail sent August 20, 2015, wherein you advise that you represent a client who obtained a restaurant liquor license approximately two (2) years ago, via intermunicipal transfer. Your client now wants to transfer the license back to the original municipality, which you advise is agreeable to receiving the license. You note that section 461 of the Liquor Code states that “licenses approved for intermunicipal transfer may not be transferred from the receiving municipality for a period of five (5) years after the date that the licensed premises are operational in the receiving municipality.” [47 P.S. § 4-461(a)]. Since the statute uses the verb “may not” instead of “shall not,” you ask if the five (5) year period may be waived, and if so, which authority may waive that period.

OPINION: In addition to section 461(a) of the Liquor Code, please note that section 7.3(d) of the Board’s Regulations provides:

If a prior approval for transfer was originally granted for transfer to a different municipality, the 5-year **moratorium** on a transfer from the municipality to which the transfer was effected is measured from the date the license becomes operational.

[40 Pa. Code § 7.3(d) (emphasis added)]. The language of this regulation and section 461(a) do not allow for the waiver of the five (5) year period. Therefore, the license at issue may not be transferred to a location outside of the present municipality until five (5) years from the date that operating authority was provided by Licensing.

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.

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. 15-404