

December 16, 2015

Karen Esser
VIA E-MAIL

RE: Prior Approval of License Transfer

Dear Ms. Esser:

ISSUE: This office is in receipt of your e-mail of November 9, 2015, wherein you state that you are attempting to sell your business with its liquor license. The prospective buyers wish to ensure that they are able to get the license, making the sale contingent on such approval. You ask if there is such a thing as “pre-approval” as you do not want to sign over your liquor license before closing, which is when the buyer would be paying you for it.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Theodore’s Restaurant, Inc. holds Restaurant Liquor License No. R-14860 (LID 49092) for the premises located at 9690 West Lake Road, Lake City, Pennsylvania. You are the Board-approved manager, as well as the corporation’s president, secretary and treasurer.

OPINION: As a threshold matter, since you are potentially undertaking a significant commercial deal that includes a liquor license, you are strongly encouraged to seek private counsel from an attorney experienced in Pennsylvania liquor law and commercial transactions.

The Board’s Bureau of Licensing (“Licensing”) is charged with processing and investigating liquor license applications and then making recommendations to the Board. In order for a liquor license to be issued by the Board, including a transfer of an existing license, there must be both a person or entity and an operational premises. However, the Board may, at its discretion, grant prior approval to an applicant whose premises are not yet complete. [47 P.S. § 4-403(a)]. Typically this is relevant when a potential transferee intends to undertake remodeling of the physical premises. Once approved on a “prior approval” basis, the transferee would have six (6) months to become operational. Failure to do so could lead to the revocation of a previously approved license.

In order to be considered, the potential transferee must file an application for a license with Licensing. Transfer applications are available by calling the Board's Licensing Information Center at (717) 783-8250, or by logging onto www.lcb.state.pa.us, clicking on "For Licensees", then "PLCB Applications and Forms" and then choosing the appropriate packet. On the application for a restaurant license there is a box to check if the applicant wishes to be considered for prior approval.

As noted earlier, submitting an application on a prior approval basis allows the applicant to receive consideration of its application based on plans rather than the actual construction at the proposed premises or, if applicable, the actual alteration of existing premises. No prior approvals can be given without the submission of a transfer license application and its required associated documentation.

Next, the transfer of ownership of a license from one person or entity to another requires the filing of a transfer application with the Board. The application is investigated by Licensing, which then makes a recommendation to the three (3)-member Board. The Board, in its sole discretion, may approve, reject or condition its approval of any license transfer.

Finally, section 7.2 of the Board's Regulations requires the purchase price amount to be placed into escrow to be paid upon the Board's approval of the transfer. [40 Pa. Code § 7.2]. In response to your request for guidance, please note that typically, the commercial legal documents between the business seller (here, you) and the potential buyer include contingencies; however, this office cannot provide you with this type of legal advice regarding the sale of your business. In response to your specific question, "prior approval" is sometimes granted by the Board to prospective licensees under specific circumstances as outlined above. This office cannot advise you whether your potential scenario would be so approved by Licensing and the Board.

Should you have any additional questions, do not hesitate to 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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY 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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