

December 22, 2015

Timothy J. Huber, Esquire
Buzgon Davis Law Office
525 South Eighth Street
Lebanon, PA 17042
VIA E-MAIL

RE: Change in Corporate Ownership

Dear Mr. Huber:

ISSUE: This office is in receipt of your e-mail of November 24, 2015, wherein you state that you represent a fifty percent shareholder of an unidentified company that holds a beer distributor license. The other fifty percent shareholder of the company wishes to sell his or her stock to your client, such that your client will become the sole shareholder.

You ask for confirmation of your understanding that the Pennsylvania Liquor Control Board (“Board”) must approve such a transfer of interest and, if so, you ask what forms must be submitted. You also ask whether your client may sign an agreement with the other shareholder, pay the modest sales price of the shares, and then have you hold the shares to be transferred in escrow pending Board approval of the transfer.

OPINION: A change in the ownership of the stock of a corporate license is not considered to be a transfer; however, the transaction must be reported to the Board within fifteen days of the change. Specifically, section 5.91(a) of the Board’s Regulations states that a corporation, association or other Board-licensed entity, except a club, having officers, or directors, or stockholders, shall report a change in officers, or directors or stockholders within fifteen days. [40 Pa. Code § 5.91(a)].

A change in stockholders involving less than ten percent of outstanding voting stock need not be reported, except when the change involves a majority or controlling interest. [Id.]. Control is defined as the power or authority to manage, direct, govern, administer or oversee the operation of the licensed business. [Id.]. However, if the current business entity is dissolving and a new business entity is formed for the purpose of holding the license, then you would need to apply to transfer the license to the new entity.

Assuming from your stated fact pattern that the corporate entity is not being dissolved, a PLCB Form 866 (Notice of Change in Business Structure of Licensed Corporations, Limited Liability Companies or Limited Partnerships, Except Clubs) should be filed with the Board's Bureau of Licensing ("Licensing") within fifteen days of the finalization of the commercial transaction. This form is located on the Board's website at www.lcb.state.pa.us, then select "Licensees," then "Applications and Forms," then "PLCB-866." Please also note that this change of controlling interest information will have to be posted on the licensed premises in accordance with section 3.13(b) of the Board's Regulations. [40 Pa. Code § 3.13(b)].

Thus, in response to your questions, the proposed transaction requires only the filing of the noted form. The issue of holding the shares in escrow pending Board approval of a transfer application is moot since notice to the Board is provided after the fact. If you have any questions about the form or its filing, please contact Licensing at 717-783-8250 for assistance. Should you have any additional questions regarding the Liquor Code or Board's Regulations, 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

LCB Advisory Opinion No. 15- 504