

December 23, 2015

Corey Wark
VIA E-MAIL

RE: Club Officer Question

Dear Mr. Wark:

ISSUE: This is in response to your e-mail sent on December 7, 2015, wherein you advise that you are the president of West Berwick Hose Co. No. 1 of West Berwick, Pennsylvania, in Berwick, Pennsylvania. You advise that in 2009, George Gary Bankes had to be removed as trustee for the licensee due to a prior conviction for DUI. You ask if, due to the passage of time, Mr. Bankes is now eligible to be approved by the Board as a trustee for the licensee.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that West Berwick Hose Co. No. 1 of West Berwick, Pennsylvania, holds Club Liquor License No. C-04872 (LID 2230) for the premises located at 1433 Fairview Avenue, Berwick, Pennsylvania. Board records confirm that by Order dated April 15, 2009, the Board ordered that George Gary Bankes was to be removed from or divested of any interest in the license due to his convictions for DUI in 1996, 1999, 2001, and 2005.

OPINION: If appointment of new officers, directors, or manager/steward of a club has occurred since the last renewal application was filed, a club licensee is required to file a Status/Change of Officers, Directors and Manager or Steward of Club (PLCB-868) along with a Request for Criminal Record Check (PLCB Form E-2314) with the renewal application. [40 Pa. Code § 5.91].

The Board may consider criminal records of licensees and officers, directors, managers, or stockholders of licensees, because section 404 of the Liquor Code requires that licensees be persons of good repute, and the Board’s Regulations specify that criminal convictions impact a person’s reputation. [47 P.S. § 4-404; 40 Pa. Code §§ 1.5, 5.23]. Section 404 [47 P.S. § 4-404] further provides that the Board shall have discretion to refuse a license (including renewal thereof) to any

person, corporation, partnership, or association or any officer, director, or member thereof who shall have been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for said license.

Upon submission of the above information, the Board's Bureau of Licensing conducts an investigation and recommends to the Board whether a person with a criminal record should be permitted to serve as an officer in the organization. If it is determined that a club officer could not serve in that capacity for a club, he or she may be required to divest himself or herself of any interest in the club. Said decision is made by the Board itself and not by this office.

Finally, section 5.81 of the Board's Regulations requires that a club licensee adhere to the provisions of its constitution and bylaws. [40 Pa. Code § 5.81]. If the club's constitution or bylaws would prevent Mr. Bankes from becoming a trustee, he must resign or be removed forthwith.

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, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 15-507