

January 29, 2016

A. Locke  
**VIA E-MAIL**

**RE: Separating Business**

Dear A. Locke:

ISSUE: This office is in receipt of your e-mail correspondence of December 3, 2015, wherein you state that you have a twelve room hotel liquor license and inquire if you are able to split the business, leasing the restaurant with the liquor license to another party.

It is assumed for the purpose of this response that you hold a either a hotel liquor license or a restaurant/eating place malt beverage liquor license issued by the Pennsylvania Liquor Control Board (“Board”).

OPINION: If the license in question is a hotel liquor license, please be advised that the business cannot be split. The Liquor Code prohibits the leasing or assignment of a license. [47 P.S. § 4-468(a)]. Moreover, the Liquor Code prohibits anyone other than the named licensee from having a pecuniary interest in the operation of a licensed business. [47 P.S. § 4-404]. Section 1.1 of the Board’s Regulations defines “pecuniary interest” as:

An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business or when control is exercised by one or more of the following:

- (i) Employing a majority of the employees of the licensee.

- (ii) Independently making day-to-day decisions about the operation of the business.
- (iii) Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1; see also Appeal of E-J Westside Inn Corp., 449 A.2d 93 (Pa. Cmwlth. 1982)].

Further, section 102 of the Liquor Code [47 P.S. § 1-102] requires that a hotel's public dining room or rooms be operated by the same management that operates the bedrooms. Thus, you cannot "lease" the licensed premises to an entity that is different from the one that operates the hotel rooms and maintain your hotel liquor license.

A possible option is to utilize a management company to operate the licensed premises and hotel. For your general information, section 102 of the Liquor Code [47 P.S. § 1-102] defines "management company" as "any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises." Section 3.1 of the Board's Regulations [40 Pa. Code § 3.1] defines "management contract" as an "agreement between a licensee and a management company to operate, manage or supervise all or part of the operation of the licensed premises." Licensees are required to disclose the presence of any management agreements and must receive approval from the Board in order for a management company to operate, manage or supervise all or part of the operation of the licensed premises. Further, section 477(g) of the Liquor Code [47 P.S. § 4-477(g)] requires any management company utilized by the applicant to obtain tax clearance prior to approval of the agreement. Therefore, should you choose to utilize a management company as described above, a separate license by the management company is not required. The Board has traditionally permitted management companies to operate licensed premises on behalf of licensees, provided that said companies do not have an unlawful pecuniary interest in the license. [40 Pa. Code § 3.141].

If the license in question is that of a restaurant (R) license or an eating place (E) license, please be advised that the license may be sold/transferred separate and apart from the hotel rooms, to any qualified party, subject to Board approval; however,

licenses may not be “leased” to third parties, as the Board recognizes only the named licensee as having an interest in the license. [47 P.S. § 4-468].

Should you have any further questions or concerns regarding the Liquor Code or the Board’s Regulations, please do not hesitate to 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,

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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