

February 22, 2016

Ann Spreeman
VIA E-MAIL

RE: Sale of Liquor License

Dear Ms. Spreeman:

ISSUE: This office is in receipt of your e-mail dated January 18, 2016, wherein you ask for information regarding the sale of your liquor license and clearing any and all violations on it.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that C B T B LLC holds Restaurant Liquor License No. R-1868 (LID 67765) for the premises located at 76-78 South Main Street, Carbondale, Pennsylvania.

OPINION: As a threshold matter, due to the complex nature of the transfer of a liquor license, especially one with a citation history, you are encouraged to seek private counsel experienced in Pennsylvania liquor law to assist with the sale and transfer of your liquor license. The transfer of ownership of a liquor license from one person or entity to another requires the filing of a transfer application with the Board’s Bureau of Licensing (“Licensing”). You can obtain a transfer application by calling Licensing at (717) 783-8250, or by going to the Board’s website at <http://www.lcb.state.pa.us>, clicking on “Licensees,” then clicking on “Applications/Forms Overview,” then “Application Packets,” then “Application Packet for Transfer of License and Permit (Retail).” Please be advised that the entity acquiring the license must meet all requirements found in the Liquor Code and the Board’s Regulations before a transfer may be approved by the Board.

With regard to the citation history of your license, please be advised that the citation history of a licensee may not be cleared or expunged. Therefore, so long as the liquor license is held by the same licensee, the citation history stays with the license. Once a liquor license is transferred to a bona fide third party, the citation history of that license is typically not considered against the subsequent licensee; however, a licensee’s operational history, including its citation history, is considered when a licensee attempts to acquire another liquor license.

Please note that section 468(a)(4) of the Liquor Code authorizes the Board to condition the transfer of a license on the transferee's willingness to serve any pending suspensions of the license which resulted from a citation issued against the transferor by the Office of the Administrative Law Judge. [47 P.S. § 4-468(a)(4)]. That section also authorizes the Board to convert a pending suspension into a monetary fine upon request of the transferee if the citation has been finally adjudicated. [Id.; 40 Pa. Code § 7.10].

Please be advised that section 474.1 of the Liquor Code provides:

A restaurant, an eating place retail dispenser, hotel, importing distributor and distributor licensee whose licensed establishment is not in operation for fifteen consecutive days shall return its license for safekeeping with the Board no later than at the expiration of the fifteen-day period. The license may only be reissued from safekeeping in the manner set forth by the Board through regulation.

[47 P.S. § 4-474.1]. Further, section 7.31 (a) of the Board's Regulations provides:

A licensee whose licensed establishment is not in operation for 15 consecutive days shall return his license and, if a liquor licensee, his Wholesale Purchase Permit Cards, to the Board not later than the expiration of the 15-day period. The return of the licensing card will not invalidate the license, which will be held in safekeeping for the benefit of the licensee and be available for his use when operations are resumed at the licensed premises, or for transfer.

[40 Pa. Code § 7.31(a)]. Therefore, if you cease operations at your establishment for a period of fifteen consecutive days, you must submit the liquor license to Licensing for safekeeping prior to the expiration of the fifteenth day. The license can then be released from safekeeping upon your written request and payment of applicable fees, or upon approval of a transfer application. [40 Pa. Code § 7.31(e)]. The license will be held in safekeeping for three years. [40 Pa. Code § 7.31(d)]. The safekeeping period can be extended by the Board for successive one-year terms upon application and payment of applicable fees. [Id.]. While in safekeeping, it is the Licensee's responsibility to continue to file all applications for renewal and validation.

Please do not hesitate to contact this office should you have additional questions.

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
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. 16-030