

March 1, 2016

Angelo T. Almonti, Esquire
Corkery & Almonti
352 Fifth Street – Suite A
Whitehall, PA 18052

RE: Renting Restaurant to Another Entity

Dear Mr. Almonti:

ISSUE: Your letter of January 20, 2016 states that you have a client holding a hotel liquor license. Your client wishes to rent the restaurant/bar area of the establishment to another entity.

You understand that it is possible to have the lessee entity operate and use the current liquor license as a management company. Specifically, the lessee would operate a restaurant which would sell food and liquor using the hotel liquor license. Lessee would retain all proceeds from the sale of food and liquor and use those proceeds to pay rent. Because the license holder would not be receiving the proceeds from this business, you inquire whether this would create an unlawful pecuniary interest.

You also note that section 1.1 of the Regulations of the Pennsylvania Liquor Control Board (“Board”) [40 Pa. Code § 1.1] contains a definition of “pecuniary interest” that includes reference to “10% or more of the proceeds of the licensed business.” You inquire whether this 10% includes both liquor sales and sales of non-alcohol related items, such as food, and whether it is defined as gross or net proceeds.

Finally, you inquire whether it is possible to transfer the current liquor license to the intended lessee if that entity is not operating the hotel portion of the property. You envision that your client would continue to operate the hotel portion of the premises and the intended lessee would operate the restaurant/bar area of the building as the license holder.

Angelo T. Almonti, Esquire

March 1, 2016

Page 2

Board records indicate that 42-46 N. 10THSTR, LLC holds Hotel Liquor License No. H-585 (LID 70785) for use by it at premises located at 42-46 North 10th Street, Allentown, Pennsylvania.

OPINION: As a threshold matter, please note that the definition of “hotel” includes a requirement that the premises contain a public dining room or rooms **operated by the same management** accommodating at least thirty persons at one time. [47 P.S. § 1-102, emphasis added]. In that both of your proposed scenarios envision the intended lessee operating the “restaurant/bar area of the establishment,” proceeding under either scenario would result in your client failing to meet the requirement set forth above. Accordingly, the remainder of your inquiry is moot.

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

LCB Advisory Opinion No. 16-060