

March 16, 2016

Amanda Smith
VIA E-MAIL

RE: Convicted Felon as a Club Officer

Dear Ms. Smith:

ISSUE: This office is in receipt of your e-mail dated February 4, 2016, wherein you ask if a person who has been convicted of a felony driving under the influence charge may continue to serve as an officer of a private club. You further explain that you will be submitting the club's renewal paperwork in a few months and you want to know if such a conviction would create an issue at the time of renewal. Additionally, you note that you believe that the Pennsylvania Liquor Control Board ("PLCB") "frowns upon" the appointment of club officers who do not have clean backgrounds.

OPINION: Section 404 of the Liquor Code requires that licensees be persons of good repute, and the PLCB'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 of the Liquor Code also permits the PLCB to refuse a license to persons with a felony conviction in the five years prior to their application. Id. Divestiture of such persons may be required. 40 Pa. Code § 17.41.

Likewise, at the time of renewal, the PLCB may consider criminal convictions incurred by licensees, or officers, directors, managers, or stockholders of licensees during the renewal period. Such convictions should be reported to the PLCB when the license renewal application is filed. At that time, the PLCB's Bureau of Licensing ("Licensing") will conduct an investigation. Licensing will recommend to the PLCB whether divestiture of the convicted individual is required. A hearing on the matter may be held pursuant to section 464 of the Liquor Code. At such hearing, evidence may be heard in order for the PLCB to make a determination as to whether the individual continues to meet the requirements of section 404 of the Liquor Code, specifically whether or not the individual remains a person of good repute. 47 P.S. §§ 4-464, 4-404, 4-432(b). If not, divestiture may be required. 47 P.S. § 4-470(a.3).

Lastly, be advised that section 5.81 of the PLCB'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 prohibit the convicted individual from serving as an officer, the individual must resign from the position or be removed forthwith.

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

LCB Advisory Opinion No. 16-071