

May 3, 2016

Ron Meyers
Sunnehanna Country Club
VIA E-MAIL

RE: Catering Club Employee To Be Paid Commission

Dear Mr. Meyers:

ISSUE: This is in response to your March 9, 2016 e-mail to this office in which you ask whether your catering club may lawfully pay a commission to an employee. Specifically, if the employee responsible for handling new membership and banquets exceeds budgeted revenue for a calendar quarter, you would pay “commission” to that employee.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Sunnehanna Country Club is the holder of Catering Club License No. CC-2430 (LID 3288), for use at the premises located at 1000 Sunnehanna Drive, Johnstown, Pennsylvania. You are the PLCB-approved manager/steward.

OPINION: It would be permissible for an employee of a catering club to be compensated in part on a commission basis, provided that this arrangement would not convey to the employee an unlawful pecuniary interest in the license in violation of section 404 of the Liquor Code. 47 P.S. § 4-404.

The Liquor Code prohibits any entity other than the licensee from having a pecuniary interest in the licensed business. 47 P.S. § 4-404. Section 1.1 of the PLCB’s Regulations defines “pecuniary interest” as “an interest that sounds in the attributes of proprietorship.” 40 Pa. Code § 1.1. Such an interest is one of substantial control of a licensed premises, evidenced by participation in the profits, assumption of liability, decision-making authority and purchasing, employment and other elements of ownership. Appeal of E-J Westside Inn, Corp., 449 A.2d 93 (Pa. Cmwlth. 1982) (emphasis added).

Note that there is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business; therefore, you would need to be cognizant of the value of the commission paid as it relates to the club’s total profits. 40 Pa. Code § 1.1.

Finally, please note that this Advisory Opinion only relates to the Liquor Code and PLCB's Regulations; you may wish to consult private counsel regarding any labor or tax law implications of your proposal.

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.

Sincerely,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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

PLCB Advisory Opinion No. 16-158