

July 26, 2016

James M. Antoun, Esquire
MacDonald, Illig, Jones & Britton, LLP
100 State Street, Suite 700
Erie, PA 16507-1459

RE: Governing Body of Convention Center Authority

Dear Mr. Antoun:

ISSUE: Your letter of June 22, 2016 requests a written opinion regarding the Erie County Convention Center Authority (“Authority”). Specifically, the Authority has a governing board consisting of eleven members. One of the sitting members of the governing board is the Honorable Dominick DiPaolo, who currently holds the position of district judge of the magisterial district constituting the Sixth Ward of the City of Erie. The Authority holds a hotel liquor license for use at a property which you indicate is located in the Fourth Ward of the City of Erie. You inquire whether section 401(a) of the Liquor Code, 47 P.S. § 4-401(a), prohibits District Judge DiPaolo from serving as a member of the governing board of the Authority.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that the Authority holds Hotel Liquor License No. H-6530 (LID 73021) for use by it at premises located at 2 Sassafras Pier, Erie, Pennsylvania.

OPINION: Section 401(a) of the Liquor Code, 47 P.S. § 4-401(a), prohibits District Judge DiPaolo from serving as a member of the governing board of the Authority.

Section 401(a) states, in relevant part:

No person who holds any public office that involves the duty to enforce any of the penal laws of the United States, this Commonwealth or of any political subdivision of this Commonwealth may have any interest in a hotel or restaurant liquor license. This prohibition applies to anyone with arrest authority, including, but not limited to, United States

attorneys, State attorneys general, district attorneys, sheriffs and police officers. This prohibition shall also apply to magisterial district judges, judges or any other individuals who can impose a criminal sentence. This prohibition does not apply to members of the General Assembly, township supervisors, city councilpersons, mayors without arrest authority and any other public official who does not have the ability to arrest or the ability to impose a criminal sentence. This section does not apply if the proposed premises are located outside the jurisdiction of the individual in question.

47 P.S. § 4-401(a).

Initially, you contend that District Judge DiPaolo does not have an “interest,” as that term is used in section 401(a), in the license, in that his membership on the governing board of the Authority does not involve ownership or meet the definition of pecuniary interest in section 1.1 of the PLCB’s Regulations, 40 Pa. Code § 1.1. However, “interest” in section 401(a) is interpreted broadly and is not limited to ownership or pecuniary interests, but relates to the authority to act on behalf of a licensee and/or to direct its affairs. In that the governing body of the Authority clearly has such authority, District Judge DiPaolo has an interest in the license.

In addition, you contend that, because District Judge DiPaolo’s magisterial district is in the Sixth Ward of the City of Erie, and the hotel is located in the Fourth Ward of the City of Erie, District Judge DiPaolo “would not, as a matter of course, be enforcing penal laws in connection with matters arising in the Fourth Ward.” Based upon this, you believe that section 401(a) does not apply because “the proposed premises are located outside the jurisdiction of the individual in question.”

Unless specifically limited, the jurisdiction of a district judge is concurrent with that of a judge of the court of common pleas, and, thus, a district judge has at least countywide jurisdiction. Com. v. Ryan, 400 A.2d 1264 (Pa. 1979). This office has not been provided with any indication that District Judge DiPaolo’s jurisdiction has been specifically limited. Accordingly, the licensed premises are not located outside the jurisdiction of District Judge DiPaolo, and section 401(a) applies.

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.

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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,

A handwritten signature in cursive script, appearing to read "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

LCB Advisory Opinion No. 16-270