

October 12, 2016

David King, Esquire
VIA E-MAIL

RE: Question Concerning License Transfer

Dear Mr. King:

ISSUE: This office is in receipt of your e-mail dated July 12, 2016, in which you pose a scenario involving two restaurant liquor licenses (“restaurant 1” and “restaurant 2”) held collectively by a general partnership (“the partnership”) which is comprised of two partners, whom you identify as Partner A and Partner B. Partner A operates restaurant 1, and Partner B operates restaurant 2.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Louis Tate and Edward John Tate hold Restaurant Liquor License No. R-15760 (LID 43504) for use by it at premises located at 32 North Brady Street, DuBois, Pennsylvania. Based upon the information you provided, this is restaurant 1. Edward Tate (“Edward”), whom you identify as Partner A, is the PLCB-approved manager.

PLCB records further reflect that Louis Tate and Edward John Tate also hold Restaurant Liquor License No. R-2606 for the premises located at 625 Franklin Street, Clymer, Pennsylvania. Based upon the information you provided, this is restaurant 2. Louis Tate (“Louis”), whom you identify as Partner B, is the PLCB-approved manager for restaurant 2.

Edward and Louis have mutually decided to dissolve the partnership and divide the assets of the partnership, including the liquor licenses, equally between themselves after all the partnership’s debts are paid, pursuant to the partnership and a dissolution agreement.

Edward wants to transfer the liquor license held by restaurant 1 to an LLC (“the LLC”) of which Edward is the sole member. The LLC will run the daily operation of restaurant 1 and lease the building and equipment from Edward after the partnership is dissolved.

Based upon this information, you pose a series of questions that are set forth and answered below.

OPINION:

1. *Is it possible to transfer the license and permits for restaurant 1 from the partnership to the LLC with a single transfer application?*

Yes. A single application can be filed to apply for the transfer of the liquor license and the amusement permit from the partnership to the LLC. The transfer application also includes an option for the transferee to apply for a Sunday sales permit.

2. *Regarding the PLCB's bill-of-sale requirement (40 Pa. Code. § 7.2), considering this transaction is not a sale, but only a division of assets, will the partnership dissolution agreement satisfy the PLCB if it is accompanied by the LLC's lease of restaurant 1 building from Edward where the building is specifically allocated to Edward upon dissolution of the partnership?*

Yes, provided that the partnership dissolution agreement sufficiently sets forth the terms of the sale of the liquor license. The documentation of the underlying financial transaction for the transfer of the license is subject to review and acceptance by the PLCB's Bureau of Licensing ("Licensing").

3. *If the answer to question 2 is "no," would a sales agreement for the sale of the liquor license from Edward to the LLC with a recitation of \$1.00 as the sale price suffice if it is accompanied by a lease of the restaurant 1 building from Edward to the LLC?*

Based upon the answer to question 2, this question is moot.

4. *Will the LLC be able to continue its use of the Amusement Permit, Sunday Sales Permit, and Off-Premises Catering Permit currently held with the license by the partnership?*

No. The transfer application for the liquor license and amusement permit can include an application for a Sunday sales permit. Pursuant to section 11.174 of the PLCB's Regulations (40 Pa. Code § 11.174), Sunday

sales permits are personal to a licensee and not subject to transfer. Upon approval of a license transfer application, the PLCB can approve a provisional Sunday sales permit to a qualified licensee. 40 Pa. Code § 11.174. The provisional Sunday sales permit is valid for a period of 120 days from the date of issuance, exclusive of periods of safekeeping. After ninety days from the date of issuance, the licensee can file an application for a Sunday sales permit under 40 Pa. Code § 11.172. The licensee will be required to pay an additional full fee in order to renew the provisional Sunday sales permit when the 120-day period extends into a new license year. If the licensee qualifies for a Sunday sales permit, the provisional Sunday sales permit fee submitted for the license year in question shall be applied in full. If the licensee fails to qualify for a Sunday sales permit, the fee submitted with the application for a provisional Sunday sales permit is forfeited. Id.

Regarding the amusement permit, pursuant to PLCB Regulations, “An amusement permit may not be assigned. When the retail liquor or retail dispenser license of the licensee is transferred by the Board from one person to another, or from one place to another, the amusement permit held by the licensee may be transferred in like manner upon the payment of a filing fee of \$10.”

40 Pa. Code. § 5.31(a)(4). Accordingly, a transfer application can include an application for an amusement permit and is similarly subject to the approval of Licensing, initially, and the three-member Board, ultimately.

Off-Premises Catering Permits (“OPCP”) are not transferable. Pursuant to section 4-493(33) of the Liquor Code, any licensee granted a license after March 1 of a calendar year has sixty days from the date of the PLCB’s approval of the transfer application to notify the PLCB of its intention to use an Off-Premises Catering Permit and pay the appropriate fee. 47 P.S. § 4-493(33). Please note that Act 39 of 2016, which went into effect August 8, 2016, made several changes to the notice requirements for OPCPs, and expanded the permitted number of OPCPs from fifty to fifty-two per calendar year. 47 P.S. §§ 4-406(f), 4-442(f), 4-446(b), 4-493(33).

Should you have any further questions or concerns regarding the Liquor Code or the PLCB’s Regulations, please do not hesitate to again contact this office.

David King, Esquire

October 12, 2016

Page 4

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

LCB Advisory Opinion No. 16-342