

January 31, 2017

Max Rutkowski, Esquire
VIA E-MAIL

RE: Interior Connection

Dear Mr. Rutkowski:

ISSUE: This office is in receipt of your e-mail dated December 29, 2016, wherein you indicate that you are writing on behalf of a catering club licensee that owns the building containing its licensed premises. This licensee is interested in leasing a portion of the owned real estate to a restaurant licensee. You note that the catering club's licensed premises would be separate and distinct from the restaurant licensee's premises, and you ask whether such an arrangement is permissible. You also note that there may be an interior connection between the two resulting licensed premises, and you ask what standards would be applied for approval of that interior connection.

Records maintained by the Pennsylvania Liquor Control Board ("PLCB") indicate that S.J.W. Home Association holds Catering Club License No. CC-5567 (LID 3984) for use by it at premises located at 1492 Woodbourne Road, Levittown, Pennsylvania.

OPINION: There is nothing in the Liquor Code or PLCB's Regulations that would summarily prohibit a catering club licensee from being the lessor to a restaurant licensee, since both are classified as retail licenses. As you noted, there can be no dual licensure of any one physical space, absent specific statutory authority.

As you are aware, pursuant to the PLCB's Regulations, "[l]icensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board." 40 Pa. Code § 3.52(b). Therefore, if there will be an interior connection between the catering club and the restaurant, this would require specific PLCB approval.

Additionally, if the PLCB approves the interior connection, the sale of alcohol by each separate licensee would need to be confined strictly to the premises covered

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by each license (catering club vs. restaurant), and the licensed areas would need to be clearly indicated by a permanent partition of at least four feet in height. 40 Pa. Code §§ 3.53-3.54. Further, the PLCB is not permitted to approve an interior connection that is greater than ten feet wide between a licensed business and another business. 47 P.S. § 4-468(e).

Please note that the decision to approve an interior connection is not made by this office but by the PLCB's Bureau of Licensing ("Licensing") initially, and the three-member Board ultimately. Accordingly, this office is unable to conclusively state whether or not a particular interior connection will ultimately be approved.

Finally, a catering club licensee must adhere to its constitution and bylaws. 40 Pa. Code § 5.81. Therefore, it is recommended that you review those organizational documents to ascertain whether there are any restrictions or prohibitions against the proposed arrangement.

Should you have any additional questions, do not hesitate to contact this office.

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,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Office of Regulatory Affairs
B. L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-580