

July 31, 1998

L.C. Heim, Esq.

KATHERMAN & HEIM, P.C.

345 East Market Street

York, PA 17403

Re: Candidate for York City Council - Interest in Liquor License

Dear Mr. Heim:

**ISSUE:** This office is in receipt of your May 26, 1998 letter and June 9, 1998 supplemental letter requesting an advisory opinion about whether your client, a candidate for York City Council, may, if elected, continue to have an interest in West Market Enterprises, Inc. ('Licensee'), holder of Restaurant Liquor License No. R-11689.

In your correspondence, you represent that York City follows the Third Class City Code, 'Mayor - Council Plan A' form of government found at Title 53 of Purdon's Statutes [53 P.S. Sections 41401 et seq.], codified as the Codified Ordinances of York, Pennsylvania, [Codified Ordinances of York, Pennsylvania, 1977, as amended] (the York City Code').

**OPINION:** Section 401(a) of the Liquor Code [47 P.S. Section 4-401(a)], provides, in pertinent part, that:

[n]o person who holds, either by appointment or election, any public office which **involves the duty to enforce** any of the penal laws of the United States of America or the penal laws of the Commonwealth of Pennsylvania or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any hotel or restaurant liquor license, nor shall such a person have any interest, directly or indirectly, in any such license.

(emphasis added). [47 P.S. Section 4-401(a)].

The appellate courts of the Commonwealth have been silent as to the meaning of 'involves the duty to enforce.' Section 104(a) of the Liquor Code, [47 P.S. Section 1-104(a)], provides, however, that the Liquor Code 'shall be deemed an exercise of the police power of the Commonwealth for the

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protection of the public welfare, health, peace and morals of the people of the Commonwealth... **and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose.**' (emphasis added).

Section 111.01 of the York City Code provides that '[t]he legislative power of the City government shall be vested in and exercised by Council. (Ord. 20-1962 Section 201.)' Section 123.01 of the York City Code provides that '[t]he executive power of the City government shall be vested in and exercised by the Mayor. (Ord. 2-1962 Section 301.)' Additionally, section 123.03 of the York City Code charges the Mayor with enforcing 'the charter and ordinances of the City and all general laws applicable thereto.' Moreover, the York City Code does not vest any authority upon City Council involving the enforcement of any law or ordinance.

Licensee is cautioned, however, that a liberal reading of section 401(a) of the Liquor Code [47 P.S. Section 4-401(a)], may impute activity of City Council on councilpersons individually, and that particular responsibilities or actions of committees involving the duty to enforce penal ordinances and law of which your client may become a member, may constitute a violation of section 401(a).

Your client, if elected, should abstain in those matters involving the police department and matters involving the duty to enforce said ordinances or laws. For example, conduct involving contract negotiation, personnel decisions, or legislative oversight of the police department have been construed by this office to fall within section 401(a)'s prohibition. Additionally, voting on resolutions that direct the Mayor or police department to proceed with a particular action that involves the duty to enforce ordinances or other laws may violate section 401(a).

In summary, each situation must be resolved on a case-by-case basis. Nothing in the York City Code prohibits, per se, your client from having an interest in the above-referenced liquor license.

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

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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,

FAITH S. DIEHL

CHIEF COUNSEL

cc: Bureau of Liquor Control Enforcement,

Pennsylvania State Police

Refer to: (717) 783-9454

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Advisory Opinion No. 98-246