

December 4, 1998

Frederick R. Mogel, Esquire
MOGEL, SPEIDEL, BOBB & KERSHNER
520 Walnut Street
P. O. Box 8581
Reading, PA 19603-8581

Dear Mr. Mogel:

ISSUE: In your letter dated November 5, 1998, you inquired on behalf of your client, John Woodward, who holds an interest in a liquor license, as to whether he could simultaneously hold the elected position of county commissioner. If this is not permissible, you further inquire whether Mr. Woodward could transfer his interest in the liquor license to his wife and also hold the position of county commissioner.

OPINION: Section 401(a) of the Liquor Code prohibits any person who holds, by election or appointment, any public office which involves the duty to enforce any of the penal laws of the United States or the Commonwealth or any penal ordinance or resolution of any Commonwealth political subdivision from having any direct or indirect interest in a hotel or restaurant liquor license. [47 P.S. Section 4-401(a)]. As referenced in your letter, this office has also reviewed the County Code which sets forth the powers and duties of county commissioners. Section 509 permits the board of county commissioners to 'adopt resolutions and ordinances prescribing the manner in which powers of the county shall be carried out and generally regulating the affairs of the county.' [16 P.S. Section 509(a)]. Further, this section permits the board to prescribe fines and penalties for violations of any county ordinances. [16 P.S. Section 509(c)]. In addition, county commissioners also serve as the county board of elections with broad duties including investigating election fraud and irregularities. [25 P.S. Section 2600 *et seq.*]. Finally, the county commissioners set the budget for all county officers, including the district attorney and the sheriff. [16 P.S. Section 1781].

While county commissioners may not *per se* have the duty to enforce penal laws, they appear to be involved in the enforcement of penal ordinances and resolutions. Moreover, this office has previously ruled that county commissioners may not hold an interest in a hotel or restaurant liquor license.

Even though Mr. Woodward is prohibited from simultaneously holding any interest in a liquor license and holding the office of county commissioner, there is nothing in the Liquor Code or the Board's regulations which would prohibit Mr. Woodward from transferring his entire interest in the license to his wife. In other words, there is no prohibition against the spouse of a county commissioner holding an interest in a hotel or restaurant liquor license. However, be advised that the transfer of the interest to the wife cannot be used as a subterfuge. For example, a county commissioner may not have a pecuniary interest in the liquor license by sharing in the profits or having control over the business operation.

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.

Very truly yours,

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LCB Advisory Opinion No. 98-392