

December 4, 1998

Herbert Fineman, Esquire

FINEMAN AND FINEMAN

1808 Rittenhouse Square

Philadelphia, PA 19103

Dear Mr. Fineman:

ISSUE: This is in response to your letter of November 13, 1998 in which you request our opinion concerning a licensing matter. You represent a nonprofit stock corporation which holds a Pennsylvania catering club license. There are approximately 140 shareholders who each own one share of stock. One of the officers of the club entered a nolo contendere plea to a charge of mail fraud in federal court about 15 years ago. You ask whether this fact will prevent the renewal of the club's license or encumber the operation of the club in any way.

OPINION: Section 404 of the Liquor Code [47 P.S. Section 4-404] provides that the Board shall have discretion to refuse a license (which would include renewal situations) to any corporation if any officer or director of such corporation shall have been convicted or found guilty of a felony within the preceding five years of the date of the license application. In the case of a club already licensed, the renewal application contains a question regarding whether any officer, director, etc. of the club has been convicted since the last renewal. Similarly, on the change of officer form that the club must complete pursuant to section 5.91 of the Board's Regulations [40 Pa. Code Section 5.91], a newly elected/appointed officer who has a criminal conviction in the preceding five years would have to report that fact.

Assuming that the officer to which you refer was recently elected/appointed, any convictions within the last five years would need to be reported to the Board on the renewal application and/or change of officer form. Although the officer's conviction occurred over five years ago, a criminal history record information check under section 3.35 of the Board's Regulations [40 Pa. Code Section 3.35] is required of all persons identified in a change of officer form, and thus, your client's officer's criminal record would likely reflect his or her nolo contendere plea to mail fraud. The Board would certainly consider the length of time that has passed since the conviction and the relationship, if any, of the type of conviction to the operation of the licensed premises.

Please note that section 404 of the Liquor Code also requires that licensees of the Board be persons of good repute. A criminal conviction could affect the licensee's reputation and might be a consideration upon renewal of the application.

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,

FAITH S. DIEHL

Chief Counsel

c.c. Pennsylvania State Police

Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454

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LCB Advisory Opinion No. 98-393