

January 4, 1999

Charles J. Phillips, Esquire
BASKIN , LEISAWITZ, HELLER &
ABRAMOWITCH, P.C.
Berkshire Commons
Suite 400
2201 Ridgewood Road
Wyomissing, PA 19610-1193

**RE: Paul Whiteman - Lilly Corporation
t/a The Morgantown Hotel**

Dear Mr. Phillips:

ISSUE: This office is in receipt of your November 19, 1998 letter in which you inquire whether your client, Paul Whiteman, as the sole shareholder of Lilly Corporation, t/a The Morgantown Hotel, a Pennsylvania liquor licensee, may also serve as the supervisor for Caernarvon Township, a township of the second class. According to your research, neither Section 65607(1) of Title 53, nor subsection (7) of that section, appear to provide specific enforcement powers by a supervisor over any penal laws. The Township has its own police department which is responsible for the enforcement and prosecution of the Crimes Code within the Township boundaries. Although the police officers are employees of the Township and subject to certain oversight by the supervisors, the enforcement of the Crimes Code is left to the prosecutorial discretion of the police department. You request an advisory opinion about whether Mr. Whiteman is prohibited from holding his office as Supervisor while at the same time holding an interest in a liquor license. Alternatively, you inquire whether, if Mr. Whiteman were to transfer all of his shares in the corporation to his wife, he would still be considered to have a direct or indirect interest in the liquor license.

OPINION: Section 401(a) of the Liquor Code prohibits any person with a direct or indirect interest in a hotel or restaurant liquor license from holding, either by appointment or election, any public office which involves the duties 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. [47 P.S. §4-401(a)]. According to Title 53, townships of the second class are governed and supervised by boards of supervisors [53 P.S. §65601] whose duties include "the general governance of the township and the execution of legislative, executive and administrative powers in order to secure the health, safety and welfare of its citizens." [53 P.S. §65607(1)]. Boards of supervisors also exercise corporate powers of second class townships [53 P.S. §66505], including the power to "make and adopt any ordinances, bylaws, rules and regulations . . . necessary for the proper management, care and control of the township . . .

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and the maintenance of peace, good government, health and welfare of the township, its citizens, trade, commerce and manufacturers." [53 P.S. §66506]. In addition, township supervisors are responsible for employing persons to conduct the business of the township, and for providing for their supervision and compensation. [53 P.S. §65607(3)]. Such employees include township law enforcement personnel. [53 P.S. §§66901-66903].

Because it appears that your client's position as Supervisor of Caernarvon Township involves the duty to enforce the criminal laws, he would not be permitted to hold that position while at the same time maintaining his interest in his liquor license. However, your client would not be considered to have a direct or indirect interest in a liquor license if he were to transfer all of the shares in his corporation to his wife, as long as that transfer meant that he no longer maintained any pecuniary interest in that license.

I hope this letter has provided you guidance on this issue. Please do not hesitate to contact this office if you have any further questions.

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

cc: Pennsylvania State Police-
Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 99-001