

February 3, 1999

John Woodward
President - Third & Spruce Café, Inc.
238 South Third Avenue
West Reading, PA 19611

Dear Mr. Woodward:

ISSUE: This office is in receipt of your letter dated January 25, 1999 in which you inquire whether you, as the sole shareholder and director of the Third & Spruce Café, Inc., which holds restaurant liquor license number R-12505, could at the same time hold the elective office of school board director. Included with your letter are Wyomissing Area School District's designations of authority and powers of the Board of School Directors.

OPINION: Section 401(a) of the Liquor Code prohibits any person with a direct or indirect interest in a 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 ordinances or resolution or any political subdivision of this Commonwealth. [47 P.S.§4-401(a)]. Historically, this office determines whether a particular public office violates the Liquor Code on a case-by-case basis by reviewing the specific powers and duties set forth by the political subdivision with respect to a particular elective position. Following review of the documentation from the Wyomissing Area School District provided with your letter, it is the opinion of this office that the duties of a school board director do not include the duty to enforce any penal law and, therefore, you would be permitted to hold your restaurant liquor license while at the same time holding the position of school board, director if elected.

Please do not hesitate to contact this office if you have any further questions.

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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. 99-037