

AMENDED OPINION

February 8, 1999

Theodore P. Michaels, Esquire
11 South Whitehorse Road
Phoenixville, PA 19460

Dear Mr. Michaels:

ISSUE: This office is in receipt of your January 12, 1999 letter in which you state that you represent Bruce F. Campbell, the sole proprietor and owner of Restaurant Liquor License No. R-20010, located at 1416 State Road in Phoenixville. Mr. Campbell apparently obtained the license through inheritance from his father, who had inherited it from his father, the originator of a nine-hole public golf course in excess of 2,500 yards. At the time application was made for the liquor license, the Liquor Code did not provide for public golf course licenses; therefore, the license obtained was a restaurant license.

Mr. Campbell and his sister, Patricia C. Young, President and Secretary of CY Group, Inc., a Pennsylvania Subchapter "S" corporation, are desirous of obtaining a privately-owned public golf course license for the premises currently served by the restaurant license. They would like to hold the public golf course license in a corporate name rather than as individuals. In addition, they would like to transfer the restaurant license to another location within Schuylkill Township to be run by a separate entity. You inquire whether a sole proprietor, while acting as a president of a corporation, may apply for and obtain a privately-owned public golf course liquor license while he is still in possession of a restaurant liquor license at the same premises. You further inquire whether he could simultaneously surrender for safekeeping, rather than surrender for cancellation, the restaurant license pending future sale to an unrelated third party.

OPINION: Section 461 of the Liquor Code limits the number of restaurant liquor licenses which may be issued in a municipality (the quota). [47 P.S. §4-461]. Section 461(a) of the Liquor Code exempts privately-owned public golf courses from the aforementioned limitations. [47 P.S. §4-461(a)]. However, section 461(f) of the Liquor Code provides that the section 461(a) exception to the quota "shall not apply to the owner of [a privately-owned public golf course] who has, within three years prior to the effective date of this amendatory act or at any time after the effective date of this amendatory act, sold or transferred a regularly issued license for such course." [47 P.S. §4-461(f)]. Section 461(f) thus expressly prohibits one holding a restaurant license at a privately-owned public
Theodore P. Michaels

THEODORE P. MICHAELS, ESQUIRE

February 8, 1999

Page Two

golf course from selling that license or placing it into safekeeping and then obtaining a free public golf course (**PGR**) license.

If, however, your client agreed to cancel its restaurant license upon receipt of a new PGR license granted by the Board, section 461(f) would not apply because your client would not be selling or transferring its current restaurant license and, therefore, he could obtain a **PGR** license. If your client completely liquidated his ownership in the golf course and sold the golf course to an unrelated third party, the third party would be permitted to obtain a privately-owned public golf course license.

I trust that this answers your questions. 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

c.c. Pennsylvania State Police
Bureau of Liquor Control Enforcement

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

LCB Advisory Opinion No. 99-045