

June 21, 1999

Ace Mann
werps@penn.com

Dear Mr. Mann:

ISSUE: This office is in receipt of your April 14, 1999 e-mail in which you inquire whether a club would have to change its club license under the following circumstances. The club was originally chartered with membership qualification requirements in accordance with the national organization. The club would now like to change its membership qualification requirements so that they are different than the national organization. In essence, the club would have two different standards for membership. You have indicated that the club currently only has one type of membership. It has been licensed since 1924, when it was incorporated. The proposed change would necessitate a change in the club's bylaws.

OPINION: The Liquor Code is silent on the issue of members and the types of memberships a club may have. The Liquor Code does, however, require that a club be a group of individuals associated not for profit which admits members upon written application, investigation and ballot. [47 P.S. Section 1-102]. Section 5.81 of the Board's Regulations [40 Pa. Code Section 5.81] requires that a club licensee adhere to the provisions of its constitution and bylaws. Therefore, your club must adhere to any membership requirement set forth in its constitution and bylaws. As long as the change of the type you are recommending is provided for or permissible under the club's constitution and the amendment to its bylaws, and the changes do not conflict with the requirements of section 102 of the Liquor Code, new classifications or requirements concerning memberships would be permissible, and the club would not be required to change its club license.

Please be advised, however, that if your club received its liquor license under Liquor Code section 461.1 by virtue of its affiliation with the national organization, your club would lose its license if it broke its affiliation with the national organization. [47 P.S. Section 4-461.1].

Enclosed are copies of Liquor Code sections 1-102 and 4-461.1 and Regulation section 5.81 for your records.

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: Bureau of Liquor Control Enforcement,
Pennsylvania State Police
Walter Eckenrode

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LCB Advisory Opinion No. 99-167

SECTION 102. DEFINITIONS. –

The following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

'Club' shall mean any reputable group of individuals associated together not for profit for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, having some primary interest and activity to which the sale of liquor or malt and brewed beverages shall be only secondary, which, if incorporated, has been in **continuous existence and operation for at least one year**, and if first licensed after June sixteenth, one thousand nine hundred thirty-seven, shall have been incorporated in this Commonwealth, and, if unincorporated, for at least ten years, immediately preceding the date of its application for a license under this act, and which regularly occupies, as owner or lessee, a clubhouse or quarters for the use of its members. Continuous existence must be proven by satisfactory evidence. The board shall refuse to issue a license if it appears that the **charter** is not in possession of the original incorporators or their direct or legitimate successors. The club shall hold regular meetings, conduct its business through officers regularly elected, admit members by written application, investigation and ballot, and charge and collect dues from elected members, and maintain such records as the board shall from time to time prescribe, but any such **club may waive or reduce in amount, or pay from its club funds, the dues of any person who was a member at the time he was inducted into the military service of the United States** or was enrolled in the armed forces of the United States pursuant to any selective service act during the time of the member's actual service or enrollment. The term includes a privately-owned private golf course.

SECTION 461.1. INCORPORATED UNITS OF NATIONAL VETERANS' ORGANIZATIONS.-

(a) The board shall have the authority to issue new licenses to incorporated units of national veterans' organizations, as defined herein, in municipalities where the number of licenses exceeds the limitation prescribed by section 461.

(b) The term **'national veterans' organization'** shall mean any veterans' organization having a national charter.

The term **'incorporated unit of a national veterans' organization'** shall mean any incorporated post, branch, camp, detachment, lodge or other subordinate unit of a national veterans' organization having one hundred or more paid up members and organized for a period of at least one year prior to filing the application for a license. The term does not include auxiliaries, 'sons of' or other similar organization.

The term **'affiliated organization'** shall mean home associations, home corporations, auxiliaries, 'sons of' or similar organizations which are directly affiliated with an incorporated unit or a national veterans' organization. An affiliated organization must meet the definition of a club set forth in section 102, except that:

(1) if incorporated, the affiliated organization need not have been in continuous existence for at least one year prior to its application; or

(2) if unincorporated, the affiliated organization need not have been in continuous existence for at least ten years prior to its application.

(c) When the charter of an incorporated unit of a national veterans' organization is suspended or revoked, the club license of the organization shall also be suspended or rescinded. The club **license** of an incorporated unit of a national veterans' organization is **not transferable** to any other organization or person, except as provided in this section.

(d) An incorporated unit of a national veterans' organization may transfer its club license to its affiliated organization as long as, in addition to fulfilling all the requirements pertaining to the transfer of club licensee, the state department of the national veterans' organization provides the board with written approval for

such a transfer. The license shall be suspended or rescinded upon the suspension or revocation of the charter of the affiliated incorporated unit of the national veterans' organization. The license shall also be rescinded upon request of the state department of the national veterans' organization or if the affiliated organization's affiliation with the incorporated unit of the national veterans' organization is severed.

(e) Only one club license may be issued to the incorporated unit of the national veterans' organization, and the board may not issue a license to an incorporated unit of a national veterans' organization if any of the unit's affiliated organizations holds a club license.

(f) For purposes of this section, a municipality which permits the issuance of club liquor licenses to incorporated units of national veterans' organizations also permits the transfer of such licenses to an affiliated organization of the incorporated unit of the national veterans' organization.

(g) An incorporated unit of a national veterans' association or an affiliated organization which has its license suspended or rescinded or its request for transfer denied under this section may request a hearing before a hearing examiner under section 464. The board may not consider the propriety of the state department of the national veterans' organization's decision to suspend the charter, revoke the charter or refuse to approve the transfer. The written request from the state department of the national veterans' organization, standing alone, is admissible evidence at the board hearing. An appeal of the board's decision may be taken under section 464, except that the appeal shall not act as a supersedeas of the board's decision.

Sec. 5.81. Constitution and bylaws.

A club licensee shall adhere to the provisions of its constitution and bylaws.