

July 2, 1999

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(AMENDED ADVISORY OPINION NUMBER ONLY)

Charles V. Henry, III, Esq.
HENRY & BEAVER, LLP
937 Willow Street
P.O. Box 1140
Lebanon, PA 17042-1140

Dear Mr. Henry:

ISSUE: This office is in receipt of your letter dated June 2, 1999 in which you request an advisory opinion regarding whether or not the following arrangement is permissible under the current statutes and regulations. Your client, Kim Lonh, recently acquired title to property he formerly leased. The subject property, he operates a facility known as Country Garden 6-Pak of Lebanon, Inc. with a restaurant liquor license. The tract also includes a building previously occupied by a Pizza Hut restaurant. Mr. Lonh desires to make renovations to the former Pizza Hut building and lease it to a corporation operating a beer distributorship. The structure of the arrangement is that title to the property would be held solely by Mr. Lonh's wife who would resign from her current position as a stockholder and officer of Country Garden 6-Pak, Inc., and who would have no other relationship as an employee or otherwise with that company. Mr. Lonh would continue to operate the restaurant through the corporation as its sole stockholder, director, officer and manager. The beer distributorship would be owned and operated by a third party, and neither the landlord nor Mr. Lonh would have any position with said company as a stockholder, director, officer, manager or employee. The leases for both businesses would be on a square foot basis and not on a percentage basis related to sales or earnings of the respective businesses.

OPINION: Section 411(e) of the Liquor Code provides that:

no...restaurant...licensee, and no officer, director or stockholder, agent or employe of any such licensee shall in any wise be interested, directly or indirectly, in the ownership or leasehold of any property...used by a distributor, importing distributor...in the conduct of his business; nor shall any...restaurant, licensee, or any officer, director, stockholder, agent or employe of any such license, either directly or indirectly, lend any moneys, credit, or give anything of value or the equivalent thereof, to any distributor, importing distributor...for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used in the conduct of his business.

[47 P.S. Section 4-411(e)].

Accordingly, your client would not be permitted to hold a restaurant liquor license while maintaining an ownership interest in the real estate where the distributorship was located. However, if Mr. Lonh completely divested himself of any interest in the real estate upon which the distributorship would be located, and he received no financial benefit from that arrangement, the arrangement you propose would be permissible.

Please find enclosed a copy of section 411(e) of the Liquor Code for your review.

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

Enclosure
cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

LCB Advisory Opinion No. **99-238**

SECTION 411. INTERLOCKING BUSINESS PROHIBITED. -

(e) Except as herein provided, no hotel, restaurant, retail dispenser or club licensee, and no officer, director or stockholder, agent or employe of any such licensee shall in any wise be interested, directly or indirectly, in the **ownership or leasehold of any property or the equipment** of any property or any mortgage lien against the same, used by a distributor, importing distributor, or by an importer or sacramental wine licensee, in the conduct of his business; nor shall any hotel, restaurant, retail dispenser or club licensee, or any officer, director, stockholder, agent or employe of any such licensee, either directly or indirectly, **lend any moneys, credit, or give anything of value or the equivalent thereof**, to any distributor, importing distributor, importer or sacramental wine licensee, for equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment used in the conduct of his business.