

November 2, 1999

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J. Alex Hartzler
BUCHANAN INGERSOL PROFESSIONAL CORPORATION
One South Market Square
213 Market Street, Third Floor
Harrisburg, PA 17101

RE: Groff Farm Restaurant & Golf Club, Inc.

Dear Mr. Hartzler:

ISSUE: This office is in receipt of your letter dated October 8, 1999 in which you inquire regarding several alternatives you propose on behalf of your client, Groff Farm Restaurant & Golf Club, which currently holds restaurant license number R-17870. Groff is in the process of applying for a new privately-owned public golf course liquor license (PGR-142). Upon issuance of the PGR license, Groff has proposed to voluntarily relinquish the restaurant license only to be held in safekeeping on behalf of Groff until such time it is able to locate a buyer for the license. You indicate that this procedure is consistent with your interpretation of the applicable provisions of Pennsylvania law, and it is this alternative that your client would like to adopt. In the event that this procedure is not possible, you propose that Groff be permitted to expand its existing restaurant license so that the entire golf course is licensed. Creating difficulty, however, is an intervening thoroughfare which separates the restaurant license from holes one through fifteen. In order to overcome this pattern, Groff has proposed to license the ninth hole turn shed as an extension of the restaurant (located between the ninth and tenth holes), and thereafter to extend the license to cover the entire course.

OPINION: With regard to your primary objective of obtaining of a PGR license and placing the restaurant license in safekeeping pending the sale to a third party, be advised that section 461(f) of the Liquor Code sets forth that an owner of a privately-owned public golf course may not obtain a privately-owned public golf course restaurant liquor license, which is not subject to quota pursuant section 461(a), if the owner of such golf course has 'sold or transferred a regularly issued license for such course.' [47 P.S. Section 4-461(f)]. Because a restaurant license in this situation cannot be sold, it must be submitted to the Board for cancellation in accordance with section 7.32(b) of the Board's Regulations upon approval of the PGR license. [40 Pa. Code Section 7.32(b)]. Thus, it is not possible for your client to obtain a PGR license while at the same time holding its restaurant license in safekeeping pending its sale to a third party.

With respect to your alternative that the company be permitted to expand its existing license such that the entire course would be licensed, be advised that section 7.21(b) of the Board's Regulations permits an extension of premises to include only abutting or adjacent sidewalks or the immediate, abutting, adjacent and contiguous vacant land. [40 Pa. Code Section 7.21(b)]. Because there is located between the restaurant license and holes one through fifteen an intervening thoroughfare, the extension would not be abutting, adjacent or contiguous and, therefore, an extension to license the entire golf course would not be approved. Likewise, because the turn shed is separated from the restaurant liquor license by the same intervening thoroughfare, it would not qualify as an extension of the existing restaurant liquor license.

Groff's would, however, have the option of selling the golf course and the restaurant liquor license, completely divesting itself of both, thereby allowing the sale of the restaurant liquor license, while still allowing the buyer of the premises to obtain a PGR license.

This will confirm that your request that Groff's application for the PGR license be held for an additional thirty (30) days has been granted by David C. Martin, Director, Bureau of Licensing.

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
David C. Martin

LCB Advisory Opinion No. 99-357