

December 14, 1999

Telephone: 717-783-9454
FAX: 717-787-8820

Janet L. Jones
2684 Glades Pike
Somerset, PA 15501

Dear Ms. Jones:

ISSUE: This office is in receipt of your letter dated November 21, 1999 in which you inquire about what would happen to a limited winery license if one shareholder of the corporation which holds the license were to sell its shares to an individual who is not a citizen or resident of the United States. According to your letter, you wish to sell your shares, which represent 20% of the shares issued by a corporation which holds a limited winery license, to a citizen and resident of South Africa.

OPINION: Section 503(c) of the Liquor Code, as you have noted, provides that '[n]o license shall be issued ... to any person unless... in the case of corporations, each and every stockholder thereof is a citizen of the United States of America.' [47 P.S. Section 5-503(c)]. A 1974 Attorney General Opinion has stated that requiring an officer of a licensee to be a United States citizen is in violation of federal civil rights law [42 U.S.C.A. Section 1981] and the Fourteenth Amendment to the Federal Constitution. [1974 Op. Atty. Gen. No. 23]. Furthermore, the Supreme Court case, *Bernal v. Fainter*, 467 U.S. 216, 8 L.Ed.2d 175, 104 S.Ct. 2313 (1984), held that any discrimination based on alienage would be reviewed under strict scrutiny. Finally, section 1983 of the U.S. Code [42 U.S.C.A. Section 1983] gives a person deprived of any rights, privileges or immunities secured by the Constitution and laws by another person operating under color of any state a right of action against the depriving party.

As a result of federal law and the aforementioned rulings, this office has consistently held that it would be permissible for a liquor license to be held by a corporation whose officers, stockholders or managers are U.S. citizens or resident aliens. Because the individual to whom you wish to sell your interest in the subject liquor license is neither a citizen nor resident alien of the United States, however, sale of your stock to that individual would place the subject licensee in violation of section 503(c) of the Liquor Code, subjecting it to suspension or revocation under section 514 of the Liquor Code, or fines in lieu of suspension as provided in section 516 of the Liquor Code. I have provided copies of sections 503(c), 514 and 516 of the Liquor Code for your review.

Please do not hesitate to contact this office if you have any additional 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

LCB Advisory Opinion No. 99-395