

December 28, 1999

Telephone: 717-783-9454  
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Mr. Alfred E. Cox  
11301 Country Club Road  
Waynesboro, PA 17268

Dear Mr. Cox:

ISSUE: This is in response to your November 9, 1999 letter to this office on behalf of Zembo Shrine, holder of catering club license No. CC-6274. In your letter you ask for this office's approval of three contracts executed by the Shrine. The first was a commercial lease contract for use of a kitchen between the Shrine and Sir D's, Inc., Donald Noss, President. The second was a contract between the Shrine and Noble Donald Noss, which is entitled 'General Real Estate Management Agreement.' The third was an employment contract between the Shrine and Donald Noss, in which Donald Noss serves as bar manager at the Shrine. You mention in your letter that Donald Noss is a member of the Shrine.

OPINION: Initially, this office notes that notice of appointment of a manager or change of manager by a catering club licensee is given to the Bureau of Licensing and not the Office of Chief Counsel. Such notice must be given at the time of renewal or validation of the license. [40 Pa. Code Section 5.91(c)]. There is a change of manager form which you can obtain from the Bureau of Licensing. Its number is 717-783-8250. There is also a fee involved. As it appears from the employment agreement that Mr. Noss will be the manager of your premises, a change of manager form should be submitted to the Bureau of Licensing along with your license renewal or license validation. It appears that the management agreement would be acceptable if Mr. Noss qualifies to act as manager.

In regard to the commercial lease, it appears that the lease is between the licensee as lessor and a catering company as lessee. The lessee has a right to certain portions of the premises on a non-exclusive basis to be used as a commercial kitchen, storage facility and office. Section 3.52 of the Board's regulations prohibits a licensee from allowing other persons to operate another business on the licensed premises. In addition, a licensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board. [40 Pa. Code Section 3.52]. Thus, it would not be permissible for the Shrine to allow another business to lease the licensed premises on a non-exclusive basis. Further, if the lease were to be modified so that the premises would be leased on an exclusive basis, then the Shrine would need Board permission for an inside passage between its premises and the premises exclusively leased by the catering company prior to implementation of the lease.

Notwithstanding the above, section 5.82 of the Board's regulations allows a catering club licensee to permit a food concessionaire on its premises. [40 Pa. Code Section 5.82]. This is only permissible, however, when the club itself does not sell food. In addition, that concessionaire may not handle or dispense liquor or malt or brewed beverages. The concessionaire could neither be an officer or employee of the club, nor could it hire an officer or employee of the club or another licensee or officer or employee of another licensee. If, in fact, you wish to appoint the catering company as a concessionaire under section 5.82, then you should enter into a concessionaire contract with the catering company and not a commercial lease. Further, all of the restrictions set forth in section 5.82, including the restriction prohibiting the concessionaire from handling alcoholic beverages, must be observed.

Your final document, entitled General Real Estate Management Agreement, is between the Shrine and Charlene M. Meyer's Catering, Inc., assignor of Sir D's, Inc. A review of this document indicates that Charlene M. Meyer's Catering, Inc. would be the rental agent for the licensee. While management companies are generally permissible so long as the management agreement does not rise to a pecuniary interest on behalf of the management company, they are typically seen in retail operations and not in the context of a club operation since clubs are, by law, required to be an organization for which the sale of alcohol is secondary. Having reviewed the General Real Estate Management Agreement, it appears that the owner maintains ultimate authority of the operation of the club and thus, it does not appear that the management agreement, in and of itself, rises to the level of unlawful pecuniary interest. However, in that you have also provided this office with an employment agreement in which it appears that Donald Noss is being named manager of the premises, it is unclear how both Mr. Noss and Charlene M. Meyer's Catering, Inc. can both act as managers of your operation. Therefore, once the club decides exactly which entity it wishes to act as the manager of the operation, it should notify and submit the proper forms to the Bureau of Licensing which will then make a determination as to whether to approve or disapprove that managing entity.

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  
D. C. Martin, Director, Bureau of Licensing

LCB Advisory Opinion No. 99-402