

December 29, 1999

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

Jim McCarthy
City Counsel
40 East Market Street
Wilkes-Barre, PA 18711

Dear Mr. McCarthy:

ISSUE: In your fax dated December 15, 1999 you ask for an opinion regarding whether a city council member may have an ownership interest in a liquor license. Under the 3rd Class City Code and Home Rule Charter under which the city operates, city council is not responsible for enforcing the laws, ordinances of the city and does not appoint police officers or the Director of Public Safety.

OPINION: Section 401 of the Pennsylvania Liquor Code prohibits any person from holding a public office which involves the duty to enforce penal laws and at the same time holding a ownership interest in a liquor license. [47 P.S. Section 4-401(a)]. According to your letter as well as the City Charter Law for a city of the 3rd Class which has chosen a 'strong mayor' form of government, city council members' duties are legislative in nature and its actions are subject to approval by the mayor. [53 P.S. Sections 41407; 41413]. The mayor under this form of government enforces the charter and ordinances of the city and all applicable general laws, as well as appointing the heads of departments of city government and supervising those departments. [53 P.S. Section 41412].

Under current law, it is this office's opinion that you may continue to hold a position on city council as long as your duties do not involve the enforcement of penal laws. Please note that you would not be permitted to be appointed as acting mayor in the event that a member of council is appointed during a period of time the mayor is unable to perform his or her duties. [53 P.S. Section 41414].

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. 99-408