

December 14, 1999

Telephone:717-783-9454  
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Frank Alexis  
12 Black Street  
Ashley, PA 18706-2701

Dear Mr. Alexis:

ISSUE: This is in response to your letter dated November 11, 1999 in which you request an opinion as to whether, as a commissioner of a first class township, you are prohibited from being a licensee.

OPINION: Section 401 of the Pennsylvania Liquor Code provides that no person who holds any public office which involves the duty to enforce any of the penal laws of the Commonwealth of Pennsylvania or any penal ordinance or resolution of any political subdivision of this Commonwealth shall be issued any hotel or restaurant liquor license, nor shall such a person have any interest, directly or indirectly, in any such license. [47 P.S. Section 4-401(a)]. According to your letter, you are a commissioner on the Board of Commissioners of Hanover Township, a first class township.

Section 56401 of the Municipal Code provides that commissioners of first class townships appoint members of the police force and the chief of police. [53 P.S. Section 56401]. Additionally, Section 56405 states that the chief of police and policemen shall obey the orders of the Board of Township Commissioners. The above excerpts from the Municipal Code clearly indicate that, as a first class township commissioner, your office involves the duty to enforce penal laws of the municipality both directly and indirectly. Therefore, you are prohibited from being a Board licensee. However, it would be permissible for your spouse or a family member to have an interest in the license as long as you personally do not receive income from the licensed premises.

It is suggested that you divest yourself from the licensed establishment by transferring the license to a spouse or family member or resign from the Board of Township Commissioners.

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.Pinkham  
Bureau of Licensing

LCB Advisory Opinion No. 99-880