

Complying With the PLCB Isn't Always Set Forth in the Liquor Code—Local Knowledge Is a Must

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Food and Beverage

By Patrick J. Stapleton III

The great thing about the adult beverage industry is that it holds an allure for folks from all walks of life. Whether it be owning a restaurant or a hotel or getting into the wine, beer or spirits business, there is a good deal of information available on the internet regarding the processes needed to obtain proper licensing from both the Federal Trade and Tobacco Bureau (TTB) and the Pennsylvania Liquor Control Board (PLCB). Because this information is so plentiful and websites extremely informative, many people looking to obtain alcohol beverage licensing decide that the process is relatively straightforward and easy for them to navigate. As alcohol beverage counsel, we have seen time after time situations where people are lured into believing that they can navigate the licensing process alone, only to have to obtain counsel after their attempts are unproductive.

On its face, the licensing/administrative process seems to be rather straightforward and the information required, is limited. The PLCB “applicant/licensee requirements” checklist appears to be complete. However, a deep dive into the licensing process tells us that there are many unknown obstacles awaiting the unsuspecting applicant that are not readily apparent when beginning the process. As a consequence, experienced counsel can be extremely valuable in navigating the process and expediting a successful licensing application.

While some forays into alcohol beverage (manufacturing and distribution) require TTB approval, I will concentrate this review on compliance with Pennsylvania alcohol beverage law and PLCB regulations and requirements. As will be shown, what is required by Pennsylvania law and what is required during the licensing process may vary dramatically. A review of many Liquor Code sections reveals licensing requirements more attuned to small “mom and pop” operations rather than today’s prevalence of chains, multi-national corporations, and entities of diverse and complex ownership.

In fairness to the process, many of the idiosyncrasies and confusing aspects of the licensing process in Pennsylvania can be traced to the Liquor Code (47 P.S. Section 1-101). Many of the licensing requirements in the Liquor Code were born at the end of Prohibition (1933) and remain in place today. Historically, the Pennsylvania legislatures have shown

little interest in amending the Liquor Code and consequently, many of the code provisions fail to recognize the realities of modern commerce. That said, the PLCB is left to enforce and investigate realities in corporate structure and financing that were of no consequence when the code provisions were enacted. Because of these antiquated laws, applicants will need to carefully consider any corporate structures they may choose and who to include in ownership of the applicant. While a corporate structure may be chosen, the applicant needs to understand that individual owners will be scrutinized to determine that individual owners are free of any issues prohibiting them from obtaining licensing. The prime PLCB concern seems to revolve around interlocking business interests” (47 P.S. Section 411). Under this section of the code, no end seller of alcohol (restaurant, hotel, club) can have any financial interest in a manufacturer or distributor of alcohol products. This extends to landlords who are leasing property to licensees as well. This prohibition technically applies to all those individuals or entities with a financial interest, both large and small. Consequentially, the more owners, the more documentation will be required.

Given the prevalence of complex business structures (limited liability companies, partnerships, trusts, hedge funds, private equity funds, REITS, etc.), these interlocking business interest issues can become quite complex and problematic. Licensee applicants should have a clear understanding of who their owners are and whether they qualify for the type of license they seek. Because of the complex nature of many business structures applying for PLCB licensing, the application process generally requires a sometimes-lengthy negotiation between the PLCB and the applicant to provide all information required to obtain PLCB approval. Experienced counsel can be invaluable in navigating and expediting the process confirming that the applicant owners are eligible to own a license. In many instances, well-crafted affidavits and flow chart analysis can be helpful tools in meeting PLCB requirements for information.

Sometimes the level of detail required by the PLCB regarding the costs associated with the license requested and the scope of the project that will hold the license is confounding and confusing. Applicants are generally required to identify all costs associated with the project (real estate, equipment, start-up costs, etc.). In addition, applicants will need to show, with specificity, how the project is being financed. This can include loan documentation, bank and investment account statements and other financing tools. Again, many of the Liquor Code concerns regarding source of funds harken back to the 1930s when funding from “ill-gotten gains” was a particular concern. As such, PLCB investigations into source of funds continues today. Unfortunately, the information requested and the level of detail requested can vary from application to application. Only experience with the licensing process can guide applicants as the published guidelines are rather vague.

It is of interest that much of the information and documentation must be provided by applicants under penalty of perjury 18 PA. C.S.A. Section 4904 and Liquor Code Sections 4-403(h). This requires applicants to be accurate in their responses to PLCB requests.

As a result of the amount of information required by the PLCB of its applicants, it is essential that the information be gathered prior to application to ensure a relatively speedy approval. If the information is not readily available for the PLCB review, the process will stall or potentially be terminated. Once an application is filed with the PLCB, an investigator will begin their evaluation within days. Proper planning of construction projects associated with application for a license is critical as well. Licenses will not be awarded until the applicant has completed construction and obtained a local health license. Loan commitments and purchase agreement constraints must also be considered when planning out the license approval process.

When considering the retention of knowledgeable liquor counsel, one must consider the obvious costs of having to wait for a PLCB license as opposed to being awarded one weeks or months earlier. The ability of applicants to actually operate their business with the appropriate PLCB license is of paramount importance. The costs, both financial and psychological, on the applicant choosing to “go it alone” can be significant.

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