



ADVISORY NOTICE NO. 19

INTERMUNICIPAL TRANSFER OF RETAIL LICENSES JUNE 5, 2002

TO: All Retail Licensees and Municipalities

Act 141 of 2000 and Act 10 of 2002 amended the Liquor Code to allow for an intermunicipal transfer of retail (restaurant, eating place retail dispenser, club) licenses from one municipality to another municipality within the same county. The purpose of this Advisory Notice is to answer questions frequently asked regarding intermunicipal transfers. A copy of the relevant provisions of the Liquor Code is enclosed.

1. **Can a retail license be transferred from one municipality to another municipality?**

Yes. Act 141 of 2000 eliminated the municipality-based quota and replaced it with a county-wide quota. It specifically allows the intermunicipal transfer of retail (restaurant, eating place retail dispenser, club) licenses. Under certain circumstances, municipal approval from the receiving municipality must accompany the transfer application.

2. **What is the procedure for transferring a license from one municipality into another municipality?**

If the number of existing licenses in the receiving municipality exceeds one (1) license per three thousand (3,000) inhabitants, then the applicant must acquire approval from the governing body of the receiving municipality ("receiving municipality" or "municipality") prior to submitting its application to the Liquor Control Board ("Board"). The applicant must request a hearing from the receiving municipality, and the receiving municipality then must schedule at least one (1) hearing for the purpose of taking testimony on the transfer application. The receiving municipality must render a decision within forty-five (45) days of the original request. The receiving municipality must grant the approval unless it finds that doing so would have an adverse effect on the welfare, health, peace and morals of either the municipality or its residents. The approval must be in the form of an ordinance or resolution, and it must accompany the application filed with the Board. The ordinance or resolution must include the specific name of the applicant entity and the exact address.

3. **What type of procedures must be followed at the hearing held by the municipality, i.e., what constitutes proper notice, how is evidence to be introduced, etc.?**

The Liquor Code is silent as to the appropriate procedure to be used by the municipality when it conducts its hearing. Therefore, the receiving municipality should follow whatever procedure it uses when it conducts hearings (as opposed to simply holding meetings) in terms of notice to be given and the manner in which the proceedings will be held.

4. **May the receiving municipality require the applicant to fill out an application and pay a fee before it processes the application and schedules a hearing?**

Again, the Liquor Code is silent as to whether a municipality may impose an application fee and whether a municipality may require an applicant to fill out an application and as to what specific information may be requested. However, since the statute requires the

receiving municipality to ascertain whether the approval of the application will have an effect on the welfare, health, peace and morals of the municipality, it implicitly authorizes the receiving municipality to ask questions to get the information necessary to make such a determination. At the very least, the receiving municipality should ascertain the name of the applicant, the identity (i.e. license number) of the license being transferred, the location of the proposed transfer, and information on the proposed business.

5. What if the municipality refuses to grant a hearing or refuses to approve the application?

While the statute requires a municipality to render the decision within forty-five (45) days of the initial application, an applicant who feels aggrieved by the decision of the municipality, either because the municipality refuses to issue a decision or because of the decision itself, must appeal to the Court of Common Pleas in the county in which the proposed licensed premises is located. The Board does not have the authority to ignore the refusal of the receiving municipality absent an order from the Court of Common Pleas reversing that decision.

6. Can a municipality impose additional restrictions on the applicant or otherwise grant conditional approval?

The Liquor Code is silent as to whether the municipality can condition its approval on such things as limiting the type of entertainment or the hours of operation. Generally speaking, the Liquor Code preempts municipal attempts to regulate entities licensed by the Board, although section 493.1 of the Liquor Code allows a municipality to regulate zoning and to enforce any local ordinances and codes dealing with health and welfare issues. Since the Board itself does not have authority to impose additional restrictions or conditions on an applicant, the Board will not be bound by any additional restrictions or conditions imposed by the municipality. Therefore, the issue of imposing additional restrictions or conditions on an applicant is a matter to be resolved in the Court of Common Pleas.

7. If a municipality has one (1) license but has less than three thousand (3,000) people, is there a need for hearing?

Yes. Prior to the enactment of Act 141 of 2000, the Liquor Code imposed a prohibition on the issuance of additional retail licenses in a municipality if there was already more than one (1) license for each three thousand (3,000) inhabitants. However, that prior language also specifically authorized the Board to always issue at least one (1) license in each municipality. Act 141 requires the applicant to get municipal approval when the number of existing licenses exceeds one (1) license per three thousand (3,000), and does not have language which allows the transfer of a license in a municipality with less than three thousand (3,000) people. Therefore, if a municipality has a population of less than three thousand (3,000) people and already has an existing license, the applicant must receive municipality approval before submitting an application with the Board.

8. Are there any additional restrictions imposed on a license successfully transferred from one municipality to another?

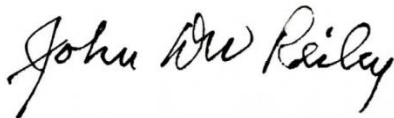
Yes. Such licenses may not be transferred out of the receiving municipality for a period of five (5) years from the date of original transfer into the municipality.

9. **Does a municipality have any standing to challenge the transfer of a license into its jurisdiction in those situations where municipality approval is not required or when it cannot establish that the license will have an adverse effect on the welfare, health, peace and morals of the municipality or its inhabitants?**

Yes. Sections 404 and 432 of the Liquor Code were amended so that a municipality has the right to protest any intermunicipal transfer regardless of the number of licenses already located in the municipality. The Board has also been authorized to refuse an intermunicipal transfer if the receiving municipality files a protest to that application. In addition, section 464 of the Liquor Code grants a municipality standing to take an appeal of any decision involving an intermunicipal transfer.

Please govern your operations accordingly.

**BY ORDER OF:
THE PENNSYLVANIA LIQUOR CONTROL BOARD**

A handwritten signature in black ink that reads "John D.W. Reiley". The signature is written in a cursive, flowing style.

JOHN D.W. REILEY
Secretary to the Board

TITLE 47 - PURDON'S STATUTE
PENNSYLVANIA LIQUOR CODE

* * *

§4-404. Issuance of hotel, restaurant and club liquor licenses.

The board may, in its discretion, refuse an application for an economic development license under section 461 (b.1) or an application for an intermunicipal transfer of a license if the board receives a protest from the governing body of the receiving municipality. The receiving municipality of an intermunicipal transfer or an economic development license under section 461 (b.1) may file a protest against the transfer of a license into its municipality, and the receiving municipality shall have standing in a hearing to present testimony in support of or against the issuance or transfer of a license.

§4-432. Malt and brew beverages retail licenses.

(d) ... The board may, in its discretion, refuse an application for an economic development license under section 461 (b.1) or an application for an intermunicipal transfer of a license if the board receives a protest from the governing body of the receiving municipality. The receiving municipality of an intermunicipal transfer or an economic development license under section 461 (b.1) may file a protest against the approval for issuance of a license for economic development or an intermunicipal transfer of a license into its municipality, and such municipality shall have standing in a hearing to present testimony in support of or against the issuance or transfer of a license.

§4-461 Limiting number of retail licenses to be issued in each county.

(b.3) An intermunicipal transfer of a license or issuance of a license for economic development under subsection (b.1) (2) (i) must first be approved by the governing body of the receiving municipality when the total number of existing restaurant liquor licenses and eating place retail dispenser licenses in the receiving municipality exceed one license per three thousand inhabitants. Upon request for approval for an intermunicipal transfer of a license or issuance of an economic development license by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer a license into the municipality or acquire an economic development license from the Pennsylvania Liquor Control Board. The governing body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer of a license or issuance of an economic development license. The municipality must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the municipality or its residents. A decision by the governing body of the municipality to deny the request may be appealed to the court of common pleas in the county in which the municipality is located. A copy of the approval must be submitted with the license application.

§4-464 Hearings upon the refusal of licenses, renewals or transfers; appeals.

If the application is for an economic development license under section 461 (b.1) or the intermunicipal transfer of a license, the governing body of the municipality receiving the new license or the transferred license may file an appeal of the board decision granting the license, within twenty days of the date of the board's decision, to the court of common pleas of the county in which the proposed premises is located.