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RE: Act 10 of 2002 and Transporter-for-Hire Licenses

Dear Mr. Graff:

ISSUE: This office is currently in receipt of your February 24, 2003 facsimile correspondence wherein you request information regarding Act 10 of 2002 and you request information on how it impacts a company that holds a transporter-for-hire license. You further present the following list of questions for response: (1) Can the holder of a transporter-for-hire license deliver beer from a "D" distributor or "ID" to bars, restaurant and homes; (2) Can they deliver wine or whiskey to bars, restaurants or homes; (3) If an establishment (bar or restaurant) phones in their order, can we (the transportation company) pay for the product at time of pick-up as long as the invoice is in the establishment's name and then we re-collect the money at the time of the delivery; (4) In order to service different territories, can an establishment use any state store to phone in their order to, as long as the card is on file listing Graff Trucking Employees on their wholesale card; (5) Can a "D" distributor or "ID" distributor get this license and (6) What is the minimum age of a delivery driver. Your questions will be answered in the order presented.

OPINION: (1) How does Act 10 of 2002 impact a company which holds a transporter-for-hire license?

There are no provisions of Act 212 of 2002, which impact a company that is the holder of a transporter-for-hire license. Should you desire a copy of Act 10, House Bill 1519, please visit the Pennsylvania General Assembly Home Page at www.legis.state.pa.us. Once you have gained access to the homepage click onto "Session Information," next click onto "Electronic Bill Room." On the Electronic Bill Room page, enter "H1519" into the document field, adjust the session field to the "2001-2002 Regular Session" and click onto "Go." Upon display of the Bill Information page, click onto "As Printed (PDF)" adjacent to "Current P.N." to bring up the current text of House Bill 1519, also known as Act 10.

(1) Can the holder of a transporter-for-hire license deliver beer from a "D" distributor or "ID" distributor to bars, restaurants or homes?

A transporter-for-hire license permits transporters for hire (“transporters”) to transport alcoholic beverages in vehicles owned or possessed by them, or operated by them for other licensees pursuant to lease or agreement. [40 Pa. Code § 9.28(a)]. As such, a transporter may deliver beer for a “D” or an “ID” to bars, restaurants and homes.

(2) Can a transporter deliver wine or whiskey to bars, restaurants or homes?

The holder of a transporter-for-hire license, class A, is authorized to transport liquor, malt or brewed beverages or alcohol to or from points located in this Commonwealth. [40 Pa. Code § 9.1]. Thus, a class A transporter-for-hire licensee may deliver wine or whiskey to bars, restaurants or homes.

(3) If an establishment (bar or restaurant) phones in their order, can we (the transportation company) pay for the product at the time of pick-up, as long as the invoice is in the establishment’s name and then we re-collect the money at the time of delivery?

For the purpose of answering this question, it is assumed that the phone-in orders by the bar or restaurant are to be made to a Pennsylvania Wine and Spirits Shoppe. The only way in which retail licensees may move alcoholic beverages to their premises from the Board’s stores without going to the stores is for licensees to place their orders, pay for them, and have them delivered by common carrier or delivery service that holds the transporter-for-hire license issued by the Board.

Retail licensees are given wholesale cards, which allow them to purchase liquor at the wholesale price for orders of fifty dollars (\$50.00) or more. [40 Pa. Code § 11.5]. Further, a licensee may authorize up to two (2) agents to make purchases on its behalf for use in its business or establishment. The signature of the agent shall appear on the wholesale liquor permit card. [40 Pa. Code § 11.7]. On presentation by the permit holder or its authorized agent at a Wine and Spirits Shoppe, the wholesale liquor purchase permit card allows the purchase of liquors at the wholesale price as established by the Board, and it is required before store personnel will release the alcohol to someone on behalf of a licensee. [40 Pa. Code § 11.9]. Therefore, if one wishes to regularly provide a transporter-for-hire business for retail licensees, he or she should be listed as an agent on the wholesale purchase permit card.

(4) In order to service different territories, can an establishment use any state store to phone in their order, as long as the card is on file listing Graff Trucking employees on their wholesale card?

Licensed retail establishments are assigned specific Pennsylvania Wine and Spirits Shoppes in which to make their purchases of wine and liquor with the use of their wholesale purchase permit card. As stated above, if your company wishes to regularly provide transporter-for-hire services for

certain retail licensees, it should be listed as an agent on the wholesale purchase permit card of such licensees.

(5) Can a "D" distributor or "ID" distributor get a transporter-for-hire license?

There is nothing in the Liquor Code or the Board's Regulations that specifically prohibits a "D" or "ID" from applying for or holding a transporter-for-hire license. However, should the purpose of acquiring such a license, amount to the "D" or "ID" conducting another business, separate from its licensed function, such would be prohibited by section 5.32 of the Board's Regulations. [40 Pa. Code § 5.32]. Further, section 431 of the Liquor Code provides that the holder of a distributor or an importing distributor license may sell or deliver malt or brewed beverages anywhere within the Commonwealth of Pennsylvania. [47 P.S. § 4-431]. As such, transportation of malt or brewed beverages is permitted as part of the holding of a distributor or importing distributor license. Such a license does not permit a distributor or importing distributor to transport wine or liquor.

(6) What is the minimum age of a delivery driver?

There is nothing in the Liquor Code or the Board's Regulations addressing the minimum age of driver employees of transporter-for-hire licensees. The Pennsylvania Department of Labor and Industry may have knowledge of such general restrictions for transporters of alcoholic beverages. You may wish to contact the Bureau of Labor Law Compliance at 1-800-932-0665.

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

cc: Pennsylvania State Police
Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 03-082