

June 30, 2004

Telephone: (717) 783-9454
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Charles Greenstreet, President
Stockertown Beverage Center

RE: On-Premises Beer Tastings/Sampling

Dear Mr. Greenstreet:

ISSUE: Your e-mail of June 15, 2004 asks about possible beer tasting/sampling promotions at retail beer distributors. Your questions were: (1) who may conduct the tastings/samplings; (2) are there limitations on the size of the samples or time length of the sampling; (3) are there any limitations or restrictions on advertising the sampling; (4) are there any other facts you should know regarding sampling events. The Board's records indicate that you are president of Meadow Brook Beverage Company trading as Stockertown Beverage Center, Importing Distributor License No. ID-1449 (LID 49418).

OPINION: Tastings may be conducted by manufacturer's representatives, distributors, importing distributors, or retail licensees on licensed or unlicensed premises provided the following conditions are met: (1) the products used are legally procured, properly registered, and taxes paid; (2) there is no purchase requirement associated with the tasting; (3) there is no cooperative advertising associated with the tasting event; (4) wine and spirits manufacturers or their agents are registered pursuant to Board Regulations; (5) no more the one (1) standard-sized alcoholic beverage of each product shall be provided to each tasting participant. This office interprets a standard-sized alcoholic beverage to be twelve (12) ounces of a malt or brewed beverage such as beer, four (4) ounces of wine and one and one-half (1½) ounces of distilled spirits. These restrictions are set out in [Board Advisory Notice No. 10 \(6th Revision\)](#).

The Liquor Code and the Board's Regulations are silent on the time length of a tasting or a sampling. Such an event could only occur on your licensed premises during the hours and on the days your premises is licensed to operate. Accordingly, the tasting or sampling would have to conclude by midnight Saturday and could not begin before 2:00 a.m. Monday. Regarding unlicensed premises, any local ordinances about hours of operation and/or open containers must be observed. [47 P.S. § 4-492(4)].

A tasting is different from a sampling promotion. A sampling promotion is intended to introduce consumers to the manufacturer's product. Samplings must follow the following criteria: (1) samples may be provided by the manufacturer's representatives and distributor or importing distributor licensees to licensed and unlicensed customers; (2) samples must be in unopened containers of the smallest commercially available size; (3) the providing of such samples cannot be conditioned upon any purchase requirement; (5) samples are limited to one (1) container per patron in any offering. [[Advisory Notice No. 10 \(6th Revision\)](#)].

Advertising of alcoholic beverages is permitted in Pennsylvania under the provisions of section 498 of the Liquor Code [47 P.S. § 4-498]. As previously indicated, a tasting event may not have cooperative advertising associated with it. Cooperative advertising is advertising where licensees of different categories are jointly

involved in advertising and paying the cost thereof. Section 13.51(a) of the Board's Regulations prohibits any licensee from directly or indirectly contributing or accepting from another licensee of a different class anything of value, including advertisements. [40 Pa. Code § 13.51(a)]. As such, a supplier/brewery may not pay the entire cost for any cooperative advertising on behalf of another class of licensee of the Board. This office has historically approved cooperative advertising between beer manufacturers or distributors and retail licensees, so long as each party pays its proportional cost of the advertisement. However, the procedures for samplings and tastings prohibit cooperative advertising.

Restrictions and limitations on advertising are set out in a question and answer format in [Advisory Notice No. 15 \(2nd Revision\)](#) that is also linked to this communication for your convenience. "Advertisement" is defined as any advertising of alcoholic beverages by radio or television broadcast, newspapers, periodicals, or other publication, outdoor advertisement, or any other printed or graphic matter, including booklets, flyers, or cards, or the product label or attachment itself. Circulars or mailings may not be provided to the general public off the licensed premises. It would be permissible to send mailings or circulars to a distinct group of individuals of legal drinking age who have specifically requested to receive such mailings from the licensee.

Radio and television advertisements that make reference to prices must clearly identify the entity responsible for the advertisement. Such advertisements may not be obscene, false, deceptive, or misleading, and may not be disparaging of the products of a competitor. Such advertisements may not make a monetary comparison between brands and the prices in the advertisement must be prices in effect at the time of the advertisement. Such advertisements shall not be directed to minors to promote consumption of alcoholic beverages; nor may they be inconsistent with the spirit of safety or safe driving programs.

Internet information is considered a form of publication or graphic matter. Print advertisements are prohibited within three hundred (300) feet of a church, school, or public playground; an example of these would be a billboard or banner located on the outside within three hundred (300) feet of a church. The restrictions on advertising within three hundred (300) feet of a church, school, or public playground do not apply to any point-of-sale advertisement, menu, or other print advertising located inside the licensed premises, even if it can be seen from outside of the licensed premises.

As with any other situation involving the service of alcoholic beverages, the licensee is strictly responsible to see that alcoholic beverages are not served to minors, persons visibly intoxicated, habitual drunkards, or persons of known intemperate habits. Because this office is permitted only to provide advice within the scope of the Liquor Code or the Board's Regulations, topics such as insurance coverage or permissibility of such tasting/samplings under local ordinances cannot be addressed. If you have any questions in these areas, your local zoning and code enforcement officer, insurance company's representative or a private attorney may be able to assist you.

If any further information is required, please feel free to call.

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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

Enclosure

cc: Pennsylvania State Police,
Bureau of Liquor Control Enforcement
David C. Martin, Director, Bureau of Licensing

LCB Advisory Opinion No. 04-335