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**E: Restaurant and Brewery License**

Dear Mr. Ahmed:

ISSUE: This office is in receipt of your April 11, 2007 e-mail correspondence wherein you describe that you have a client who is proposing to open a restaurant and brewpub. Your client is under agreement to purchase a restaurant (“R”) license and it is your understanding that he will also need a brewery (“G”) license. Your client will own the entire facility, including the brewing equipment. You explain that because your client is more experienced with the restaurant business, it would like to enter into a licensing/management agreement with another existing brewpub to brew the beer on-site. The existing brewpub has its own restaurant and brews its own beer on its own site. Your client would like to take advantage of both this brewery’s brand name and brewing experience, with such brewery to have no ownership interest in your client’s brewpub. You provide that the outside brewer will be used to manage the brewing of the beer and to use its brand name on the final product. You ask if this can be done and, if not, how your client’s goals may be accomplished.

OPINION: Section 493(11) of the Liquor Code prohibits “a restaurant, hotel, or club liquor licensee, or any malt or brewed beverage licensee or any officer, servant, agent, or employee of such licensee, to be at the same time employed, directly or indirectly by any...manufacturer....” [47 P.S. § 4-493(11)]. As such, should the established brewpub, the proposed brewer of the beer, be licensed under a restaurant license and an accompanying brewery license, your client’s proposal would be prohibited by section 493(11), as such brewpub operation holding an R license is prohibited from employment by your client, the holder of a brewery/manufacturer license.

If however, the experienced brewpub is licensed as a brewery pub (“GP”) and is not the holder of a restaurant (“R”) license, the outside brewpub would not be prohibited from

brewing under a management agreement or an alternating brewer arrangement with your client.

A “management company” is defined in the Liquor Code to mean “any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the licensed premises.” [47 P.S. § 1-102].

The Board has traditionally permitted management companies to operate licensed premises on behalf of licensees, provided that said companies do not have an unlawful pecuniary interest in such license. A pecuniary interest has been defined as a substantial control of the licensed business, evidenced by participation in profits, assumption of liability, decision making authority in purchasing, or other elements of ownership. Appeal of E-J Westside Inn Corp., 449 A.2d 93 (Pa., Cmwlt. 1982). Agreements between licensees and management companies are reviewed by the Board’s Bureau of Licensing on a case-by-case basis to ensure that no unlawful pecuniary interest exists in such arrangements. Again, provided that the proposed management company/brewer does not hold a retail license, the management company could enter into a management agreement to brew on premises for your client as you have proposed, provided no unlawful pecuniary interest exists.

Under the proposed management agreement, your client/manufacture may act as its own distributor of its products or it can name a distributor as the primary or original supplier of its products. [47 P.S. § 4-431(b)].

Alternatively, the proposed brewer could also brew malt or brewed beverages for your client pursuant to an alternating brewer arrangement. An “alternating brewer” is defined in the Liquor Code as “any person, association, corporation or other business entity licensed by the Board to produce malt or brewed beverages at premises that are licensed by another entity under a Pennsylvania manufacturer’s license.” [47 P.S. § 1-102].

In order to qualify for an alternating brewer license, the applicant must hold a United States Department of the Treasury Brewer’s Notice of Registration issued for a premises within this Commonwealth and meet all qualifications required of a holder of a malt and brewed beverage manufacturer’s license. This option would also be prohibited in your client’s described situation if the proposed brewer is the holder of a retail license, as section 438(c) of the Liquor Code prohibits any person from holding more than one class of license. [47 P.S. § 4-438(c)].

Distribution of malt or brewed beverages manufactured under an alternating brewer's license must only be through specific importing distributors in the same manner as is required for out-of-state manufacturers. [47 P.S. § 4-431.1(d)].

With reference to your client's brewery selling of malt or brewed beverages under the proposed brewer's established label, such would not be permitted. Section 445 of the Liquor Code states that no brand or brands of beverages shall be offered, sold or delivered to any trade buyer within this Commonwealth unless the manufacturer first submits an application for the registration of the said brand or brands of malt beverages. [47 P.S. § 4-445]. There is no provision in the Liquor Code that provides for or permits more than one (1) manufacturer to register an identical brand. As the proposed brewer/manager already has the established registered brand for its malt or brewed beverage, your client, while maintaining title to the finished product, would not own the brand that it proposes to sell, as required of a licensed brewed pub. [47 P.S. § 4-446(1)].

I trust that the above information has adequately answered your inquires. Should you have any further questions or concerns regarding this matter that the Liquor Code of the Board's Regulations please, do not hesitate to again contact this office.

Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
Jerry W. Waters, Sr., Director of Licensing

LCB Advisory Opinion No. 07-182