

November 17, 2009

FAX: (717) 787-8820

Matthew D. Hough
Regional Sales Manager

RE: Brew on Premises Business

Dear Mr. Hough:

ISSUE: This office is in receipt of your e-mail of Tuesday, October 13, 2009, wherein you indicate that you own a bar in Pittsburgh named Hough's and that you would like to add a brew on premises section to the bar where customers can brew their own beer and bottle it. You ask if this type of configuration is legal in Pennsylvania and whether you may lawfully open this business. You further indicate that you would like to sell some of the beer produced by your customers and ask whether this is permitted by law.

Board records indicate that Matthew Dean, Inc. t/a Hough's holds Restaurant Liquor License No. R-6722 (LID 58322) for premises located at 563 Greenfield Avenue, Pittsburgh, Pennsylvania.

OPINION: In order to fully address your inquiry, it is necessary to provide some general information regarding your own ability to brew malt or brewed beverages in your licensed premises. Generally, the Liquor Code permits a person to produce up to two hundred (200) gallons per calendar year of malt or brewed beverages without a license. [47 P.S. § 4-492(1)]. Further, there is nothing in the Liquor Code or the Board's Regulations that prohibits the holder of a restaurant ("R") license from brewing his/her own beer in the kitchen of his/her restaurant licensed premises, cooking with it, and storing it on the licensed premises. [Id.; 47 P.S. § 4-401(a)]. However, these malt or brewed beverages may not be sold or offered for sale. [47 P.S. § 4-492(1)]. Homemade malt or brewed beverages may only be used for personal consumption, and at organized affairs, exhibitions, competitions, contests, tastings, or judgments. [Id.]. To manufacture malt or brewed beverages commercially, i.e., to make beer for purposes of sale to the general public or another licensee, you would need to obtain a brewery ("G") license.

A brewery license allows the holder to produce and manufacture malt and brewed beverages; transport, sell, and deliver such beverages in quantities of not less than a case or original containers containing sixty-four (64) ounces or more which may be sold separately; and sell the malt and brewed produced and owned by the brewery for consumption off the premises. [47 P.S. § 4-440]. A case is defined as a package prepared by the manufacturer for sale or distribution of twelve (12) or more original containers totaling two hundred sixty-four (264) or more fluid ounces of malt or brewed beverages excepting packages containing twenty-four (24) or more original containers each holding seven (7) fluid ounces or more. [47 P.S. § 1-102].

The Liquor Code permits licensed manufacturers, including those eligible to operate a brewery pub under section 446, to hold and operate an R license on the manufacturer's licensed premises if both licenses are held by the same entity. [47 P.S. §§4-443; 4-446]. While the statute does not expressly provide for retail licensees to obtain a brewery license for the same premises, it was the intent of the Legislature to allow this arrangement and, therefore, if all requirements are met, an R licensee may obtain a G license for use at its licensed premises. However, please be advised that a brewery licensee, with or without a retail license at its brewery, may not hold a retail license at another location. [47 P.S. §4-443].

With this background in mind it is possible to address your specific inquiry. First, with regard to customers brewing their own beer on your premises for personal consumption, assuming you obtained a G license for your restaurant, there would be no prohibition against customers of legal drinking age producing malt or brewed beverages at your facility for their personal consumption. Please note, however, that if you were charge customers a fee in order to produce these beers, you would be engaging in another business on the licensed premises in violation of section 3.52 of the Board's Regulations which mandates that a licensee may not conduct another business on the licensed premises without Board approval. [40 Pa. Code § 3.52(c)].

If you wish to sell customer-produced beer there are two (2) possibilities. First, customers of your establishment could obtain an alternating brewer ("AG") license. Under the Liquor Code and Board's Regulations, it is permissible for a

manufacturer to allow a licensed third party to use its facility for alternate brewing. [47 P.S. § 4-431.1]. A more practical method would be for you, as the G licensee, to maintain title of the customer-brewed beer and sell it like any other beer made at your facility. If this method is utilized, you should make it abundantly clear that the malt or brewed beverages produced by customers are actually the property of the licensed establishment. Further, these malt or brewed beverages may only be lawfully sold by properly licensed entities. Accordingly, proceeds from the sale of these customer-brewed beers may not be shared with the customer.

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
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