March 26, 2012

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Dave R. Fonash, President
KDP Bellefonte, Inc. and Zola New World Bistro, Ltd.

RE: Beer Festival and "G" Licensee Shareholders

Dear Mr. Fonash:

ISSUE: This is in response to your letter of February 16, 2012, in which you ask a host of questions relating to two (2) separate areas of subject matter as follows. First, you state that you currently hold three (3) restaurant ("R") licenses and one (1) malt beverage manufacturing ("G") license in Centre County, Pennsylvania, and you have a catering company attached to one (1) of the R licensees. You wish to hold a beer festival this summer in Bellefonte in conjunction with your micro-brewery, and you indicate that you already have the support of the Borough of Bellefonte and the non-profit Bellefonte Historical Society. You are familiar with the Pennsylvania Liquor Control Board's ("Board") regulations concerning tasting events at a licensed premises; however, you are considering holding your beer festival either in a non-licensed area outside of your premises (in an adjoining parking lot) or at a park in Bellefonte.

You inquire whether your G-licensed entity may obtain a "special events license" and what is involved in doing so. In the alternative, if you decide to operate the event with your unlicensed catering company, you ask whether you should obtain an off-premises catering permit through the affiliated R entity to allow for alcoholic beverage sales. In either scenario, you inquire whether you are able to lawfully charge for tickets for the event and, if so, whether all or a portion of the ticket sales must be given to a non-profit entity. You ask how you would facilitate the donation of ticket sales to a non-profit, if such is required. You ask whether you must assume all liability and responsibility for security and oversight of the beer festival. Furthermore, you ask what limitations there are on

entertainment and food at such a festival, as well as whether you may charge food vendors a fee for space at the event.

In your second set of questions, you ask whether individuals are allowed to be shareholders in multiple corporations with different G licenses, when each such corporation has a somewhat different shareholder structure than the other. To be more specific, you wish to maintain your current G license ("KDP-G"), but also acquire another G license at another location ("NEW-G"). NEW-G would have the same shareholders as KDP-G, along with some new investor-shareholders unique to NEW-G ("NEW-G-only"). Under your plan, these NEW-G-only investor-shareholders would not have any involvement in KDP-G, whereas the KDP-G shareholders would be involved in both entities.

Finally, it is your understanding that an individual may have contemporaneous ownership interests in multiple G licenses, even when the entities have different ownership structures, but that an individual may not be involved in the distribution of the products of multiple G licenses at the same time. You seek confirmation of this understanding.

Board records indicate that Zola New World Bistro, Ltd., with premises located at 324 – 328 West College Avenue in State College, Centre County, is the holder of Restaurant Liquor License No. R-19996 (LID 49080), and you are listed as Manager/Steward, President, Secretary, Stockholder and Director. KDP Bellefonte, Inc., trading as Gamble Mill Tavern, with premises located at 160 Dunlap Street in Bellefonte, Centre County, is the holder of Restaurant Liquor License No. R-15266 (LID 59588), and you are listed as President, Treasurer, Stockholder and Director. KDP Bellefonte, Inc., with premises located at 160 Dunlap Street in Bellefonte, Centre County, is also the holder of Malt Beverage Manufacturer License No. G-415 (LID 63224), and you are likewise listed as President, Treasurer, Stockholder and Director. Finally, you are an officer of another restaurant license that is currently inactive [R-20525 (LID 56323)].

<u>OPINION</u>: As a threshold matter, it is important to note that your KDP Bellefonte entities currently operate together as a "couplet" and not as a brewery pub. A "couplet" is an entity that has both a manufacturer's license and a hotel, restaurant or retail dispenser license for use at the same location. A single entity may have more than one (1) location licensed in such a manner. Further, such licenses and a person's interest in the licenses or in the entity holding the licenses

are not subject to the prohibition on interlocking businesses. [47 P.S. §§ 4-411(e), 4-438(c)].

In a telephone conversation with this office to obtain additional information, it was clarified that you are considering having a beer festival outside the premises of your G (and therefore also the associated R) license in Bellefonte. There is no "special events license" *per se* that you would qualify for under the facts presented.

A restaurant liquor license authorizes the licensee to sell alcoholic beverages only on the licensed areas of its premises. [47 P.S. § 4-406(a.1); 40 Pa. Code § 7.21(a)]. Since your parking lot is not part of the licensed premises of KDP Bellefonte, these licensees generally would not be permitted to sell beer in the parking lot. However, a restaurant license does permit the sale for consumption off-premises of no more than one hundred ninety-two (192) fluid ounces of malt or brewed beverages in a single sale to one (1) person. [47 P.S. § 4-407].

Therefore, a patron could purchase beer to go, inside of the licensed premises, as long as the purchase complies with section 407, thereafter taking the malt or brewed beverages to the adjacent parking lot area to be consumed, provided there are no local ordinances prohibiting such activity. It is advisable that you consult your local municipality in order to determine whether an open container law is in effect which would prohibit a patron from consuming malt or brewed beverages on the parking lot.

In the alternative, the licensee may apply for a temporary extension of the licensed premises to cover the area of the parking lot for the event. Section 7.25 of the Board's Regulations provides:

> § 7.25. Temporary extension of licensed premises.
>
> (a) The Board has discretion to approve a temporary extension of licensed premises upon filing of an application accompanied by appropriate plans or surveys setting forth the metes and bounds, the names of the abutting streets and a plotting of the proximity of the principal licensed premises.

> (b) The application must describe the entire scope of business to be conducted at the temporarily extended licensed premises and include the specific dates and hours business will be conducted.
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> (c) A nonrefundable fee of $220 must accompany an application for temporary extension of licensed premises.
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> (d) The additional premises for which it is desired to temporarily extend a license shall be completely equipped for the carrying on of the type of business permitted under the license, but sales or storage of liquor or malt or brewed beverages may not take place in the temporarily extended premises until approval has been given by the Board.
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> (e) Approval may be in the form of a new license, giving the additional address/location or a letter authorizing the use of the additional temporary premises extension. Board approval or letter of authorization shall be maintained on the temporarily extended licensed premises.

[40 Pa. Code § 7.25].

It should be noted that the licensee must be the owner of the adjacent parking lot or have the exclusive right to use the parking lot in order for it to apply for extension of its premises covering same. Further, once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and Board's Regulations, including prohibition against minors frequenting the premises. [47 P.S. § 4-493(14)].

Effective February 20, 2012, as established by Act 11 of 2011, a licensed brewery which also holds a restaurant license, or a brewery pub, may obtain an off-premises catering permit, which will allow it to hold a catered function off of its licensed premises and on otherwise unlicensed premises. [47 P.S. § 4-446(b)]. A "catered function" means "the furnishing of food prepared on the premises or brought onto the premises already prepared, in conjunction with alcohol beverages, for the accommodation of a person or an identifiable group of people who made arrangements for the function at least forty-eight hours in advance." [47 P.S. § 1-102].

The licensed brewery/restaurant couplet holding the off-premises catering permit may sell alcoholic beverages by the glass, open bottle or other container, for consumption on the catered premises. However, no sales for take-out are permitted. Licensed breweries are allowed to transport the alcohol to and from their licensed premises to the site of the catered premises. [47 P.S. § 4-446(b)]. Note also that a licensee cannot self-sponsor the catered function; therefore, there must be a specific request from a third party for a specific event. The Liquor Code and Board's Regulations are, however, silent as to precisely whom that third party may be. For example, the third party could be an individual, a catering company, or another of your licensees. In response to your specific questions, the third party need not be a charitable or non-profit group.

The following additional restrictions apply:

- Alcoholic beverages may only be provided during the hours the licensee can normally sell such beverages.
- All servers at the catered site must be RAMP-certified.
- A catered function cannot last longer than one (1) day and no more than fifty (50) such events may be held by a particular licensee in a calendar year.
- A catered function cannot be held on already-licensed premises.
- No permits can be issued to a location that is subject to a pending license renewal objection by Licensing/Board, or a pending license suspension or the one (1)-year prohibition on the issuance or transfer of a license due to a citation action.
- Written notice of the catered function must be provided to the local police or, if none, to the Bureau of Liquor Control Enforcement, at least forty-eight (48) hours in advance. [47 P.S. § 4-446(b)].

To obtain an off-premises catering permit, you should contact the Bureau of Licensing. The fee for the initial permit is five hundred dollars ($500.00); subsequent permits in the same calendar year are free of charge. Violations of the off-premises catering permit law will be prosecuted like other Liquor Code violations, and the Board can refuse to issue subsequent permits or honor subsequent dates on an existing permit. [47 P.S. § 4-493(33)].

In response to your specific question, any of your establishments holding an R license, could apply for an off-premises catering permit if the above parameters are met. Provided that the catered event is sponsored by a third party, it is possible, although not required, to charge for tickets to the beer festival. Also it is not required that any portion of such ticket sales be donated to a non-profit organization.

Regarding your question about liability, be advised that liability in any particular situation would depend upon the particular facts as presented to a court of competent jurisdiction. You may wish to consult with a private attorney regarding such matters because the Board has no authority or expertise in the assessment of potential civil liability of a licensee for a private cause of action by a third party.

As for event security, a licensee maintains the same obligations for proper service, including not serving minors or visibly intoxicated persons, whether at the regularly licensed premises or at an off-premises catered event site. [See e.g., 47 P.S. § 4-493(1) and (14)]. You may provide entertainment in accordance with local noise ordinances, as well as in accordance with section 493(34) of the Liquor Code, which provides that a licensee may not use or permit to be used inside or outside of the premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee's property line, including an off-premises catering permit ("OPC") location. [47 P.S. § 4-493(34)]. That is to say, even though OPC locations are licensed premises by virtue of the permit, they are subject to section 493(34), even though this may essentially preclude having amplified music at an open location such as a park, since such music may be heard beyond the property line involved. Each case is fact-specific and should be carefully considered, possibly with the assistance of experienced private counsel.

Next, since the third party catering company would be the entity actually hosting the beer festival, and not your R licensee, Zola, the catering company could charge other food vendors a fee for space at the event. It is customary at beer festivals to have other merchandise for display and/or purchase as well and those arrangements are generally handled by the third party event sponsor (in this hypothetical, your unlicensed catering company).

Moving to your second set of questions concerning shareholder ownership of multiple manufacturer licenses, you may not lawfully obtain a new G license with a new corporate entity even if only one (1) of the shareholders is a shareholder of the current G licensee because the exception outlined in sections 411 and 438(c) would not be applicable. You may however, wish to consider creating another couplet with either of your two (2) other R licenses ("Zola" or "Alto") by having one other those existing entities obtain a G license. Note that the shareholders on the coupled G license would, by definition, be the same as the shareholders on the existing R license, and the G would have to be in the same geographic location as the R.

By way of legal explanation, sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license and a manufacturing license. [47 P.S. §§ 4-411; 4-443]. Section 438(c) of the Liquor Code prohibits a person from possessing more than one class of license. [47 P.S. § 4-438(c)]. However, sections 411 and 438 provide an exception which states:

> an entity may acquire both a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for use at the same location and more than one location may be so licensed. The licenses and a person's interest in the licenses or in the entity holding the licenses shall not be subject to this section.

[47 P.S. §§ 4-411; 4-438(c)].

As you know, a G license is considered a manufacturing licenses for purposes of the Liquor Code, and an R license is considered a retail license for purposes of the Liquor Code. It is permissible to hold both types of licenses (R and G) only in circumstances where both licenses (R and G) are coupled at the same location. It is impermissible for one (1) entity to hold both an R license and a G license, simultaneously, unless the R is coupled to the G.

It is permissible for a single entity to hold a G license and an R license at one (1) location, and a different entity (with similar or overlapping but not identical shareholders) to hold a G license and an R license ("coupled license") for use at a second location, because the licenses at the latter location would not be considered by the Board when determining whether any of the entities in

question – including their shareholders – has an impermissible interlocking interest in multiple licenses issued by the Board.

Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to again contact this office.

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
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
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LCB Advisory Opinion No. 12-105