

December 10, 2012

Telephone: (717) 783-9454

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John Giannopoulos

Re: Limited Distillery with Brewery

Dear Mr. Giannopoulos:

ISSUE: This office is in receipt of your e-mail of November 2, 2012, in which you inquire whether it would be permissible for your company, Sly Fox Brewing Company, to acquire a limited distillery license for use at the same location currently licensed as a brewery and brewery pub. You advise that another possibility would be to open the limited distillery in a separate location if you can transfer fermented liquid from the brewery side via a pipe or hose for distillation. You further inquire whether the proposed businesses can share a tasting room.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Sly Fox Brewing Company is the holder of Brewery License No. G-374 (LID 53109) and Brewery Pub License GP-374 (LID 66391) for use at the premises located at 331 Circle of Progress Drive, Pottstown, Pennsylvania.

OPINION: Initially, be advised that a brewery (“G”) 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 one hundred twenty-eight ounces or more which may be sold separately anywhere within Pennsylvania. [47 P.S. § 4-431(a)]. The G license also allows the holder to sell malt and brewed beverages produced and owned by the brewery to unlicensed individuals on the licensed premises for off-premises consumption in containers or packages of unlimited quantity and of any volume. [47 P.S. § 4-440].

A brewery pub (“GP”) license allows the holder to operate a restaurant or brewery pub within or immediately adjacent to the brewery premises. [47 P.S. § 4-446]. It allows sales for on-premises consumption of the beer produced by the brewery, and sales for off-premises consumption of its products not to exceed one hundred ninety-two (192) fluid ounces in a single sale. GP licensees are also permitted to sell Pennsylvania wines for on-premises consumption. [47 P.S. § 4-446(2)].

Per Act 113 of 2011, a limited distillery license allows the holder to produce not more than one hundred thousand (100,000) gallons of distilled liquor per year. [47 P.S. § 5-505.4]. Limited distilleries can manufacture and sell bottled liquor produced on the licensed premises to the Board, to licensees, and to the public between 9:00 a.m. and 11:00 p.m., operate and maintain up to two (2) Board-approved, additional satellite locations, apply for and hold a restaurant, hotel, or eating place retail dispenser license to sell alcoholic beverages for on-premises consumption at the licensed distillery premises, sell food and liquor for consumption on or off the licensed premises, and offer on-premises tastings. [Id.].

With regard to your question concerning the possession of multiple licenses, please be advised that although the general rule in section 438(c) of the Liquor Code is that no person shall possess more than one (1) class of license, there is nothing in the Liquor Code or Board's Regulations prohibiting an entity from holding multiple licenses, provided such licenses are of the same class. [47 P.S. § 4-438(c)]. Please note that 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]. However, sections 411 and 438 provide an exception which allows an entity to 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 further allows more than one (1) location to be so licensed. [47 P.S. §§ 4-411; 4-438(c)]. Therefore, notwithstanding the general rule, you may hold multiple manufacturing licenses.

However, be aware that the Board's Bureau of Licensing ("Licensing") will not typically dual-license a location, absent specific statutory authority. Thus, only one license may be in effect at one (1) time at any particular portion or location. In addition, the Board has, in the past entered into a Conditional Licensing Agreement ("CLA") with a licensee that wishes to place two (2) manufacturing licenses at the same location. However, such an arrangement would require the consent of both Licensing and the Board, and a decision on whether such an arrangement is acceptable is not a decision made by this office. Thus, this office cannot provide any further guidance other than suggesting that if you wish to pursue this matter, you should submit an application to Licensing.

With regard to your question regarding a distillery located adjacent to a brewery with some of the distilling occurring at the brewery premises, this would likewise

be viewed as dual-licensing of the brewery location (because of the distilling that would occur there) and again is a matter for Licensing and the three (3)-member Board, not this office.

If you have any further questions or concerns regarding this matter, please do not hesitate to 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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