

April 9, 2013

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Denise Mathias
Old Republic Distillery Inc.

Re: New Limited Distillery Licensee Questions

Dear Ms. Mathias:

ISSUE: This office is in receipt of your e-mail of March 6, 2013, in which you ask who can be within the “bonded” areas of your licensed premises; whether you may give tours of your licensed premises; and whether there is a specific proximity within which the public may come to your still. You also inquire about the requirements for selling your distilled spirits to bars and restaurants; specifically, may you hire an employee to do this and are there forms that must be used while selling to bars and restaurants.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Old Republic Distillery Inc. is the holder of Limited Distillery License No. AL-6 (LID 67272) for premises located at 47 Cherry Street in Seven Valleys, Pennsylvania.

OPINION: As you may know, 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.].

It is presumed for purposes of this response that, by “bonded” areas, you are referring to that portion of your distillery in which you actually manufacture

distilled spirits. The Liquor Code and Board's Regulations are silent on the issue of who may be physically present in this area; however, it is possible that the Department of Health, the Department of Agriculture, and/or the federal Alcohol and Tobacco Tax and Trade Bureau ("TTB") have relevant regulations.

On the issue of selling your distilled spirits to bars and restaurants, while the Liquor Code permits you to sell your products to licensed entities, your license only permits you to make sales on your licensed premises. [47 P.S. § 5-504.4(b)(1)]. "Sales" is defined in the Liquor Code as "any transfer of liquor, alcohol or malt or brewed beverages for a consideration." [47 P.S. § 1-102].

You may also consider hiring a licensed agent to do what is referred to as "missionary work" on behalf of your limited distillery. "Agent" is defined as an individual employed by a licensed vendor to promote the sale of liquor through state liquor stores. [Id.]. Agents enjoy the following privileges as set forth in section 13.73 of the Board's Regulations:

- (a) Agents may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom the agents are employed.
- (b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.
- (c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.
- (d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

[40 Pa. Code § 13.73].

As a manufacturer, however, you may educate other licensees such as bars and restaurants about your products by way of tastings or samplings and you may hire employees or agents to do this for you. Following are the specifics of each mode of education. A "tasting" or "tasting event" is defined in the Board's Regulations

as “[a] presentation of alcoholic products to the public for the purpose of market research, disseminating product information and education of the public as to quality and availability.” [40 Pa. Code § 13.201].

In Pennsylvania, prior approval is not required to conduct product tastings for market research and for the purpose of educating consumers, including other licensees, as to the quality and availability of wines, spirits, and malt or brewed beverages. Tastings may be conducted by sponsors on licensed or unlicensed premises. [40 Pa. Code § 13.211(a)]. A sponsor may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one (21) years of age or older. [40 Pa. Code § 13.201].

Sponsors conducting a tasting event must adhere to the following requirements:

1. 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 than one standard-sized alcoholic beverage of each product shall be provided to each tasting participant.

[Advisory Notice No. 10 (6th Revision)]. A standard-sized alcoholic beverage means twelve (12) fluid ounces of a malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one half (1.5) fluid ounces of liquor. [40 Pa. Code § 13.53]. You may certainly provide less than one and one half (1.5) fluid ounces of your distilled spirits, if you choose to do so.

A sampling promotion is intended to introduce consumers, including retail licensees, to a manufacturer’s product. Samplings must adhere to 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; and (4) samples are limited to one (1) container per patron in any offering. [40 Pa. Code § 13.231 and Board Advisory Notice No. 10 (6th Revision)].

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Should you have any questions and/or concerns regarding this matter, please feel free to once 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
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LCB Advisory Opinion No. 13-168