

August 16, 2013

Telephone: (717) 783-9454

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Richard E. Javage, Esquire

**Re: Promotional Items Sales by Brewpub**

Dear Mr. Javage:

ISSUE: This is in response to your e-mail of July 15, 2013, in which you state that you represent an unidentified licensed brewery and brewery pub client. This client plans to operate a retail sales space in a separate room on the licensed brewery pub premises, which room can be entered either from the outside of the building or from within the brewery pub. Within the retail shop, customers would be able to purchase only the licensed brewery's products, which would include the brewery's beer in cases and six (6)-packs, and promotional items such as shirts, hats, bottle openers and the like, all bearing only this licensed brewery's logos and information.

You state your understanding that, pursuant to Advisory Notice No. 9, your client may only sell its own products in this retail space. You ask whether any separate approval by the Pennsylvania Liquor Control Board ("Board") of these sales is required and you also ask whether there are any restrictions applicable to the layout of the retail space.

OPINION: As a threshold matter, please note that Advisory Notice No. 9 applies to distributor and importing distributors, and not to breweries or brewery pubs. However, section 13.52(f) of the Board's Regulations permits licensees of any class to sell promotional items advertising their own business only, such as tee shirts, mugs, caps and other similar items, to the general public. [40 Pa.Code § 13.52(f)]. Therefore, your client may sell merchandise that advertises its business without any additional Board approval.

On the issue of proposed sale of beer in this retail space, please also note the following limitation on sales made by a brewery pub licensee. While a licensed brewery (“G”) may sell to individuals for off-premises consumption malt or brewed beverages in containers or packages of unlimited quantity and of any volume, [47 P.S. § 4-440], a licensed brewery pub has all the rights and is subject to the same conditions and qualifications as those imposed on holders of an eating place retail dispenser (“E”) license, except as set forth in section 3.92. [Id.].

A brewery pub license allows sales for on-premises consumption of the beer produced and owned 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. [47 P.S. § 4-407(a)]. Holders of brewery pub licenses are also permitted to sell Pennsylvania-made wines for on-premises consumption. [47 P.S. § 4-446(a)(2)]. For these reasons, your brewery pub client could not sell cases of beer from the brewery pub premises; rather, sales would be limited to one hundred ninety-two (192) fluid ounces in a single sale. Sales of cases may occur from the brewery premises.

Also, if the separate room in which you indicate that the brewery pub’s retail sales will take place is not currently part of the brewery pub’s licensed premises, then you would need to file an extension of premises application to include that physical space. [40 Pa. Code § 7.21]. Application forms and instructions may be found on the Board’s website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us) or from the Board’s Bureau of Licensing (“Licensing”). The application packet is entitled “Application Packet for Extension of Retail License to Cover Additional Premises” (which includes form PLCB-47). Please note that requests for approval of extension of premises are evaluated by Licensing, not this office.

An applicant for extension of the licensed premises must submit, with the application, a fee of two hundred twenty dollars (\$220.00). The licensee shall conspicuously post a notice of its application, using a form provided by the Board, on the outside of the licensed premises for a period of at least fifteen (15) days. [40 Pa. Code § 7.22].

An applicant may request “prior approval” of the extended area if physical alterations or new construction will be required. [40 Pa. Code § 7.23]. Before an application is considered by the Board, Licensing will conduct an inspection of the

premises to ensure that the additional premises is completely equipped to carry on the licensed business.

Please note that once the extension is approved, the subject area becomes subject to all restrictions in the Liquor Code and the Board's Regulations, including the prohibition on minors frequenting the licensed premises. [47 P.S. § 4-493(14)].

If 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  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-382