

September 4, 2013

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David Oakley  
3 Guys & A Beer'd LLC  
10 Enterprise Drive  
Carbondale, PA 18407

**Re: Contract Brewing Questions**

Dear Mr. Oakley:

ISSUE: This is in response to your e-mail sent on August 15, 2013, wherein you advise that you have a Pennsylvania-licensed brewery. Currently production is completed at your facility, but you are looking into entering a contract with another brewery, assumed, for purposes of this response, to also be a Pennsylvania-licensed brewery. The other brewery will manufacture your product at their facility, at the same time your facility continues production. You ask if any additional licensure is required.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that 3 Guys & A Beer'd LLC holds Malt Beverage Manufacturer License G-432 (LID 64873) for the premises at 10 Enterprise Drive, Carbondale, Pennsylvania.

OPINION: Section 431 of the Liquor Code provides that a licensed malt or brewed beverage manufacturer may "produce and manufacture malt or brewed beverages, and ... transport, sell and deliver malt or brewed beverages from the place of manufacture...." [47 P.S. § 4-431]. There is nothing in the Liquor Code that prohibits a brewery from manufacturing beer for another brewery. However, as set forth in Advisory Notice No. 17, this type of arrangement, known as contract brewing, must meet certain requirements:

- (1) The manufacturer having its products brewed under contract, which is the ultimate seller of the malt or brewed beverages, must retain title to the products brewed by the contract brewer;

- (2) Both manufacturers involved in the contract must have manufacturer licenses in their respective states;
- (3) Both manufacturers must keep complete records for two years on production and sales of their respective products;
- (4) All brands of malt or brewed beverages offered, sold or delivered within Pennsylvania shall be properly registered with the Board [47 P.S. § 4-445; 40 Pa. Code § 9.108];
- (5) Distribution of malt or brewed beverages within Pennsylvania shall be either by a Pennsylvania-licensed manufacturer, whose principal place of business is located in Pennsylvania and who retains title to the products, or by the appointed importing distributor or distributor for a specific geographical area by written agreement [47 P.S. § 4-431(b)];
- (6) All other Board and federal Alcohol and Tobacco Tax and Trade Bureau requirements must be met by both parties to a contract brewing arrangement; and
- (7) All contractual agreements between manufacturers must be forwarded to Malt Beverage Compliance, P.O. Box 8940, Harrisburg, Pennsylvania 17105-8940, listing complete details of the contract before production begins.

As long as both breweries are licensed manufacturers, no additional licensure is required. Except for alternating brewers, all manufacturers are required to have their own facility, equipment and employees necessary for production of malt or brewed beverages in order to be licensed. A federal brewer's permit alone is not sufficient to authorize contract brewing.

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,

David Oakley  
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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. 13-408