

September 12, 2013

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Michael Hepps, Esquire

**Re: Delivery of Beer and Food by Licensees**

Dear Mr. Hepps:

ISSUE: This is in response to your e-mail sent on August 17, 2013, wherein you advise that you represent a licensee who is presently making preparations to deliver beer along with food. Based upon the nature of your questions, it is assumed that your client holds a distributor license. You advise that the licensee intends to deliver the food items that are listed in this office's "May 1, 2012, transmittal." It is assumed that you are referring to Advisory Opinion No. 12-165, which addresses a distributor's request to sell additional items. Furthermore, it is assumed that the sales in question are to non-licensees.

Your client wants to be certain that this plan is legal, and you presume that it is. Your client also wants to make pizza on the premises, in the warehouse portion of its building, and is concerned with whether this is legal. You advise that your client is willing to make the pizza in an adjacent storeroom and freeze it, if that is required. Your client would like to deliver hot pizza, without freezing it, and you ask if that is legal.

OPINION: Initially, please note that a licensed distributor may only make sales of malt or brewed beverages on the licensed premises. [47 P.S. § 4-441(c)]. Sales are not permitted at any location other than the licensed premises. [Id.]. While your client is permitted to transport malt or brewed beverages to a non-licensed premises such as a residence, the sale must have been completed at the licensed premises prior to such delivery. [Id.]. A "sale" is defined as "any transfer of liquor, alcohol or malt or brewed beverages for a consideration." [47 P.S. § 1-102]. Therefore, your client may deliver beer, as long as the sale is completed before delivery. It would not be permissible for the customer to pay the delivery person for the beer at the time of delivery.

In addition to beer, the Pennsylvania Liquor Control Board ("Board") has allowed distributor licensees to sell various foods, including frozen pizzas, without any additional Board approval. [Advisory Notice No. 9 (5th Revision)]. If your client sells, on the licensed premises, only the items listed on Advisory Notice No. 9, no additional Board approval is necessary. However, Board approval is required if a distributor wants to deliver such items. Section 492(11) of the Liquor Code provides that it is unlawful for a distributor "to deliver

or transport any malt or brewed beverages in any vehicle in which any other commodity is being transported” without Board approval. [47 P.S. § 4-492(11)].

With regard to making pizza on the premises, please note that a licensee is prohibited from conducting another business on its licensed premises except with approval of the Board. [40 Pa. Code § 3.52(c)]. Further, a distributor may not engage in any other business, other than the business of selling malt or brewed beverages, without Board approval. [41 P.S. § 4-492(12)]. The making of the pizza on the premises could be considered to be conducting another business on licensed premises, for which Board approval would be necessary.

If your client receives approval to make pizza on the premises, the pizzas would have to be frozen before they could be delivered. The Board has refused to grant approval to distributors who wish to also sell hot pizza or other warm foods.

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. 13-418