

October 2, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

Edward Tubbs
Re: Beer To Go

Dear Mr. Tubbs:

ISSUE: This office is in receipt of your e-mail dated September 5, 2013, wherein you seek an opinion regarding the sale of malt or brewed beverages (“beer”) for off-premises consumption. You state that when selling beer for off-premises consumption, you have required customers to remove the beer from the first transaction from the property before initiating a second transaction. You further state that while attending a Responsible Alcohol Management Program (“RAMP”) class, the instructor stated that sales of beer for off-premises consumption must be two (2) separate transactions; however, the first purchase of beer in the first transaction does not necessarily have to be removed from the property prior to the initiation of the second transaction. You note that in a previous Advisory Opinion, OPN2012-494, this office has stated that the beer from the first transaction does indeed to be removed from the property before beginning the second transaction. You ask for clarification on this matter

Pennsylvania Liquor Control Board (“Board”) records indicate that Centre HTL Associates LTD & Aegis Rest Concepts, LLC & Happy Valley Mad Mex LLC & Joint Venture holds Hotel Liquor License No. H-4723 (LID 49251) for the premises located at 240 South Pugh Street, State College, Pennsylvania.

OPINION: As you are aware, section 407 of the Liquor Code allows retail licensees, other than clubs, to sell malt or brewed beverages for off-premises consumption in quantities of not more than one hundred ninety-two (192) fluid ounces in a single sale to one (1) person. [47 P.S. § 4-407]. It is permissible for a licensee to sell to a patron up to one hundred ninety-two (192) fluid ounces for off-premises consumption and then to make a subsequent sale of up to one hundred ninety-two fluid (192) ounces for off-premises consumption within a relatively short period of time for this same patron, so long as these transactions constitute two (2) separate sales. “Sale” is defined in section 102 of the Liquor Code as including “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102].

This office has historically advised licensees that in order for transactions to consist of two (2) separate sales, payment and delivery of the alcohol from the first transaction must occur before the second transaction begins. Therefore, in order for two (2) transactions to be considered separate sales, the first beer purchase must be removed from the premises before the second purchase is begun.

Please do not hesitate to contact this office should you have additional questions.

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
Lori Rizzo, Bureau of Alcohol Education

LCB Advisory Opinion No. 13-436