

November 21, 2013

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Paul Herron, Esquire
Kelly & Herron
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Re: Limited Distilleries

Dear Mr. Herron:

ISSUE: This is in response to your letter dated October 30, 2013, in which you advise that you represent a recently-licensed limited distillery. You understand that regulations relating to limited distilleries have not yet been approved. As a result, your client has several questions regarding the sales and shipping of his product. You ask if a limited distillery can:

1. Take orders online and ship directly to consumers in Pennsylvania via UPS?
2. Take orders online and ship directly to consumers in other states via UPS?
3. Take phone or e-mail orders from wholesale clients (restaurants, hotels, etc. – it is believed that you mean retail licensees) in Pennsylvania and ship via UPS?
4. Take phone or e-mail orders from wholesale clients (restaurants, hotels, etc. – it is believed that you mean retail licensees) in other states and ship via UPS?
5. Ship product directly to Pennsylvania Liquor Control Board (“Board”) stores via UPS?

OPINION: The Liquor Code clearly allows the limited distillery to sell directly to the Board, to retail licensees, and to the public:

The holder of the license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public between the hours of nine o'clock antemeridian and eleven o'clock postmeridian so long as a specific code of distilled liquor which is listed for sale as a stock item by the board in State liquor stores

may not be offered for sale at a licensed limited distillery location at a price which is lower than that charged by the board and under such conditions and regulations as the board may enforce.

[47 P.S. § 505.4(b)(1)]. However, until the Board's proposed regulations are approved, it is this office's position that direct shipment by a limited distillery to Pennsylvania consumers is not permissible at this time. Limited distilleries may only ship product to the Board or to Pennsylvania retail licensees and only by use of a licensed Transporter for Hire Class A or C. [See 40 Pa. Code § 9.11]. While UPS holds an active Transporter for Hire Class A license, there are over three hundred (300) entities that also hold such a license, any of which could be used to transport liquor produced by your client.

As for sales to out of state consumers, a limited distillery must use a licensed Transporter for Hire Class A or C for transportation within Pennsylvania, and would need to comply with the direct shipment laws of the receiving state.

Please note that the method of ordering product – whether by Internet, telephone, or e-mail – is not germane to the legality of the shipment.

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. 13-498