

November 22, 2013

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Theodore J. Zeller, III, Esquire
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The Paragon Centre, Suite 300
1611 Pond Road
Allentown, PA 18104-2258

RE: The Old Dock Street Brewery, LLC

Dear Attorney Zeller:

ISSUE: This office is in receipt of your letter dated October 11, 2013 wherein you request an advisory opinion on behalf of your client, The Old Dock Street Brewery, LLC (“Dock Street”). By way of background, you indicate the following:

Dock Street’s approved location under its current license is 701 S. 50th Street, Philadelphia, PA 19143 (“Existing Location”).

The majority owner of Dock Street intends to organize an entity with substantially similar ownership structure to Dock Street and apply for a limited distillery license, type AL, pursuant to § 5-505.4(b)(1) of the [Liquor] Code (“Limited Distillery”). This new entity (hereinafter “NewCo”) intends for the primary location of the Limited Distillery to be operated at a location other than the Existing Location because the Existing Location may not have the space capacity for the Limited Distillery’s production requirements.

Pursuant to § 5-505.4(b)(2)(i), the holder of a Limited Distillery license may, separately or in conjunction with another Limited Distillery license, sell bottled liquors produced by the distillery at no more than two (2) Board-approved locations other than the licensed premises, with no bottling or production requirement at those

additional Board-approved locations and under such conditions and regulations as the Board may enforce. These other locations may sell distilled liquors to the Board, individuals and to entities licensed by the Board. These new distillery laws appear somewhat modeled after limited winery laws but there is a lack of clarity how these new laws operate in conjunction with the limited winery and malt beverage manufacturing laws.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Dock Street holds Manufacturer Malt Beverages License No. G-387 (LID 57013) and Brewery Pub License No. GP-387 (LID 57014) for premises located at 701 South 50th Street, Philadelphia, Pennsylvania.

OPINION: Based on foregoing, you pose three (3) questions. Those questions will be addressed in the order presented.

- (1) If NewCo applies for and is licensed as a Limited Distillery, can the Existing Location be licensed as secondary location of the Limited Distillery pursuant to § 5-505.4(b)(2)(i) for off-premises sales and/or on-premise sales?

Yes. The secondary location may be co-located at the Existing Location. Although the general rule in section 438(c) of the Liquor Code is that no person shall possess more than one (1) class of license, there is nothing in the Liquor Code or Board’s Regulations prohibiting an entity from holding multiple licenses, provided such licenses are of the same class. [47 P.S. § 4-438(c)]. The presence of a GP license at the Existing Location does not affect this analysis.

However, please be aware that the Board’s Bureau of Licensing (“Licensing”) will not typically dual-license a location, absent specific statutory authority. Thus, only one (1) license may be in effect at one (1) time at any particular portion or location. Therefore, your client would not be able to operate as a Limited Distillery and a Brewery/Brew Pub at the same time.

- (2) If the Existing Location can be licensed as a secondary location of the Limited Distillery, what conditions, regulations, or other requirements will the Board require for NewCo to operate the Limited Distillery’s secondary location at the Existing Location operated by Dock Street?

As stated above, while the arrangement you propose is legally permissible, Licensing will not typically dual-license a location, absent specific statutory authority. Thus, only one (1) license may be in effect at one (1) time at any particular portion or location. In addition, the Board has, in the past entered into a Conditional Licensing Agreement (“CLA”) with a licensee that wishes to place two (2) manufacturing licenses at the same location. Typically, the same legal entity has held both licenses. However, such an arrangement would require the consent of both Licensing and the Board, and a decision on whether such an arrangement is acceptable is not a decision made by this office. Thus, this office cannot provide any further guidance other than suggesting that if you wish to pursue this matter, you should submit an application to Licensing.

- (3) Lastly, under what condition, if any, can a limited winery, limited distillery and malt beverage manufacturing license occupy the same premises? It is assumed that the limited wineries and distilleries can sell their products to a G or a GP license which, in turn, could sell to consumers for on-premises consumption. This question more involves the off-premises capabilities at the secondary location and what, if any separation of licenses at the premises is required?

While it would be legally permissible for a limited winery, limited distillery, and malt beverage manufacturing license to occupy the same premises, the inability to dual license that location would prohibit the simultaneous operation of the licenses. Moreover, the G/GP would not be permitted to sell spirits manufactured by the limited distillery because section 446 of the Liquor Code [47 P.S. § 4-446(a)(2)] only permits brewery pubs to sell malt or brewed beverages manufactured by the brewery and wines produced by holders of Pennsylvania limited winery licenses. Moreover, neither section 505.2 nor 505.4 [47 P.S. §§ 5-505.2, 5-505.4] authorize the sale of malt or brewed beverages.

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

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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. 13-504