

December 18, 2013

Telephone: (717) 783-9454

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Scott Eden

RE: Sale of Malt Beverages Out of Assigned Territories

Dear Mr. Eden:

ISSUE: This office is in receipt of your e-mail dated November 20, 2013, wherein you advise that you seek clarification of what you believe is a conflict between Advisory Opinion No. 12-141 and Advisory Opinion No. 13-176. Specifically, you question if you may purchase beer from a distributor (“D”) who is not located in your area. You note that you wish to buy beer from a distributor in Philadelphia. This D would have lawfully purchased the beer from an importing distributor (“ID”) located in the area which has been given the territorial rights to the beer you wish to purchase. You ask, in light of the above referenced opinions, if you may lawfully purchase the beer from the Philadelphia area D.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Craft Beer Taproom, LLC holds Restaurant Liquor License No. R-18371 (LID 66083) for premises located at 57 West Market Street, York, Pennsylvania.

OPINION: Provided the beer has been lawfully purchased by the D licensee in Philadelphia, that entity may sell and deliver to you, the beer you have requested, as long as it does not violate any secondary territorial agreements.

As you appear to be aware, under the beer distribution system in Pennsylvania, out-of-state manufacturers whose products are sold and delivered in Pennsylvania are required to give distribution rights for their products to IDs for a specific geographical area within Pennsylvania. [47 P.S. § 4-431(b)]. Written territorial franchise agreements between the out-of-state manufacturer and its ID regulate, among other things, the geographical area in which the ID may sell the manufacturer’s products. [Id.]. IDs may then sell the products to IDs, Ds and other licensees within their appointed territories. [Id.]. A D licensee must purchase all out-of-state products from an ID who has been appointed to the territory in which the D licensee is located. [Id.].

An ID may sell or deliver malt or brewed beverages anywhere within the Commonwealth of Pennsylvania, *subject to its territorial agreement(s)*, which have been purchased from manufacturers or persons outside this Commonwealth, engaged in the legal sale of malt

or brewed beverages or from manufacturers or IDs licensed in Pennsylvania. [47 P.S. § 4-431].

Distributors, on the other hand, may sell or deliver malt or brewed beverages anywhere within the Commonwealth of Pennsylvania when such beverages have been purchased from persons licensed in Pennsylvania as manufacturers or IDs. [Id.]. Please be advised that a D licensee must be located within the assigned territory in order to accept the delivery of the malt or brewed beverage because acceptance outside of an assigned territory will result in suspension of the D's license for at least thirty (30) days. [Id. (emphasis added)]. Further, please note that contractual obligations between the D and ID may prohibit the D's ability to sell outside of an assigned territory. A D may not engage in any transaction that violates the terms of its territorial franchise agreement.

Thus, provided that the Philadelphia D you wish to purchase from, is also located within the territory of an ID that has been given the rights to the beer you wish to purchase, the Philadelphia D licensee (not the ID) may lawfully sell that beer to you.

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

LCB Advisory Opinion No. 13-532