

January 16, 2014

Telephone: 717-783-9454

Fax: 717-787-8820

Charlie Lambert  
In & Out Beverage Inc.  
1106 Sheller Avenue  
Chambersburg, PA 17201-2940

**RE: Off-Premises Sampling**

Dear Mr. Lambert:

ISSUE: This office is in receipt of your e-mail correspondence of December 13, 2013, wherein you indicate that your distributorship is often asked to provide the services of bringing and pouring samples for off-premises events. You further indicate that you have recently been approached by the local Chamber of Commerce about pouring samples of beer at a chili cook-off event which it is hosting. You indicate that the Chamber of Commerce is charging admission for the event. Accordingly, you ask whether your distributorship would need to obtain a special event license or some other permit to engage in these off-premises activities. You also ask whether it would be permissible for you to bring some home-brewed beer to the event to represent that portion of your business as well.

Pennsylvania Liquor Control Board (“Board”) records indicate that you are listed as the manager/steward and secretary/treasurer of In & Out Beverage, Inc., t/a In & Out Beverage, which holds Distributor License No. D-265 (LID 57136) for use at the premises located at 1106 Sheller Avenue, Chambersburg, Pennsylvania, 17201-2940.

OPINION: Initially, please be advised that section 441(c) of the Liquor Code provides that no distributor may maintain or operate any place where sales are made other than that for which the license is granted. [47 P.S. § 4-441(c)]. Further, section 9.95(a) of the Board’s Regulations requires that sales of malt or brewed beverages may not be made at any time except those in which the principal office or place of business of a licensee is maintained, and delivery may only be made from the licensed premises of the distributor. [40 Pa. Code § 9.95]. Thus, there are no circumstances under which your distributorship may sell malt or brewed beverages from any location other than its distributor-licensed premises.

However, distributors are permitted to conduct tastings or tasting events upon licensed or unlicensed premises. [40 Pa. Code § 13.211(a)]. Tastings or tasting events are different from sampling promotions and are defined in the Board's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quality and availability. [40 Pa. Code § 13.201]. Tastings or tasting events must adhere to the following criteria: (1) any products used must be legally procured and registered, and the taxes thereon must be paid; (2) there can be no purchase requirement associated with the tasting or tasting event; and (3) no more than one (1) standard size alcoholic beverage of each product may be provided to each tasting participant. [40 Pa. Code § 13.211(b)]. A standard-sized malt or brewed beverage is twelve (12) fluid ounces. [40 Pa. Code § 13.201].

Sampling promotions, on the other hand, are intended to introduce consumers to a manufacturer's product and are subject to the following criteria: (1) samples may be provided by manufacturers or their representatives, licensed distributors and importing distributors to unlicensed customers; (2) samples must be in unopened containers of the smallest commercially available size; (3) providing samples may not be conditioned upon any purchase requirement; (4) samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises; and (5) samples are limited to one container per patron in any offering. [40 Pa. Code § 13.231 and Board Advisory Notice No. 10 (6<sup>th</sup> Revision)].

Therefore, to answer your first question, it is generally permissible for your distributorship to participate in off-premises events, such as the chili cook-off, in the manner that you described, and no special event license or permit is necessary for you to do so.

Nevertheless, because of the prohibitions on purchase requirements set forth above, it would not be permissible for the entity hosting such an event to sell tickets or otherwise charge an admission fee unless the tickets or advertising materials make clear that the charge is for admission to the event and non-alcoholic drink, food and entertainment. In addition, were anyone to request free admission purely for the purpose of tasting malt or brewed beverages or receiving samples, they must be admitted free of charge.

With regard to your second question, please be advised that section 492(1) of the Liquor Code generally makes it unlawful to manufacture malt or brewed beverages without a valid manufacturer's license. [47 P.S. § 4-492(1)]. However, there is an exception to this general prohibition under which "malt or brewed beverages may be produced by any person without a license if such malt or brewed beverages are

produced not for sale and total production does not exceed two hundred gallons per calendar year.” [47 P.S. § 4-492(1)]. Moreover, malt or brewed beverages produced pursuant to this exception “may be used at organized affairs, exhibitions, competitions, contests, tastings or judging provided it is not sold or offered for sale.” [Id.]. Thus, it would be permissible for lawfully-produced, home-brewed beer to be used at events such as the chili cook-off. It is unclear from your e-mail, however, what business your distributorship is engaging in relative to home-brewed beer. You should be careful not to engage in any activity that would constitute the sale of home-brewed beer, as this would take the home-brewed beer outside the scope of the exception and, consequently, would not be permissible unless the manufacturer of such beer acquires a manufacturer’s license and registers the brands. Again, if the payment of an admission fee is necessary to obtain access to the home-brewed beer, this would constitute the sale of home-brewed beer.

Should you have any further questions or concerns regarding the Liquor Code or the Board’s Regulations, please do not hesitate to again contact this office.

**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. 13-542