

January 28, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Dave Troutman

Re: Various Questions regarding Alcohol

Dear Mr. Troutman:

ISSUE: This is in response to your e-mail sent December 21, 2013, in which you ask if a licensed establishment can purchase beer from a local distributor if the licensed distributor from which it normally purchases is either out of that beer or does not carry that particular beer. You also ask whether a licensed establishment can serve infused vodka that was made in house and served in a non-labeled container, and whether an owner of a licensed establishment can consume alcohol while he or she is there to oversee the operation and occasionally seat patrons or clear tables.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that you are the President of T & L Investment Group Inc., which holds Privately-owned Public Golf Course License No. PGR-287 (LID 59461) for the premises located at 1724 State Route 25, Millersburg, Pennsylvania.

OPINION: 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 importing distributors (“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, distributors (“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.]. 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 you are within the assigned territory of the D and the D is also located within the territory of the ID that has been given the rights to the beer that you wish to purchase, you may lawfully purchase the beer from the D.

With regard to your question of rules related to the infusion of liquors. Section 491(10) of the Liquor Code makes it unlawful for licensees to fortify, adulterate, or contaminate any liquor, except as permitted by the Board's Regulations, or to refill wholly or in part, with any liquid or substance whatsoever, any liquor bottle or other liquor container. [47 P.S. § 4-491(10)]. Therefore, a licensee could not refill liquor bottles with the infused spirits. It is permissible for infused spirits to be combined or prepared in glass containers or jars, such as a decanter or infusion jar, temporarily stored, and then served by the glass. It is also permissible to premix a cocktail and keep it in an infusion jar, but the Liquor Code prohibits creating an infusion within the original liquor bottle or storing the infusion overnight. Restaurant licensees are permitted to sell liquor only for consumption on the licensed premises. Sales of infused liquor for consumption off the licensed premises are not permitted. [47 P.S. § 4-406].

With regard to your last question, please be advised that section 493(28) of the Liquor Code prohibits the consumption of liquor or malt or brewed beverages while tending bar or otherwise *servicing liquor or malt or brewed beverages*. [47 P.S. § 4-493(28)(emphasis added)]. The term “service” is defined by the Liquor Code as “the act of providing...alcohol or malt beverages to a patron.” [47 P.S. § 1-102]. Accordingly, so long as the owner that is drinking is not engaged in the service of alcohol to patrons, neither the Liquor Code nor the Board’s Regulations prevent the owner from consuming alcohol while overseeing the operation and occasionally seating patrons or clearing tables.

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. 13-551