

February 26, 2014

Telephone: 717-783-9454

Fax: 717-787-8820

Andrew Wells  
Three Monkeys Croydon Inc.  
810-812 Bristol Pike  
Croydon, PA 19022-5413

**Re: Beer Swap**

Dear Mr. Wells:

ISSUE: This is in response to your e-mail of January 9, 2014, in which you state that you are the general manager of a gastro pub and music house. You ask if it is permissible for customers to bring in their own favorite beer and swap bottles of beer with other customers. You state that there would be no charge.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that the Three Monkeys Croydon Inc. holds Restaurant Liquor License No. R-19198 (LID 57361) for the premises located at 810-812 Bristol Pike, Croydon, Pennsylvania.

OPINION: Please be advised, that sections 491 and 492 of the Liquor Code make it unlawful for any person to possess any beer, wine or spirits within Pennsylvania that have not been purchased through a Pennsylvania wine and spirits store, a licensed limited winery, or from an entity licensed to sell malt or brewed beverages for off-premises consumption. [47 P.S. §§ 4-491(2), 4-492(3)]. Patrons should be encouraged to bring receipts to establish that any alcohol they bring in was lawfully procured. Please be further advised that selling, furnishing or giving alcoholic beverages, or permitting to sell, furnish or give alcoholic beverages to minors or to persons who are visibly intoxicated is prohibited by the Liquor Code. [47 P.S. § 4-493(1)]. Violation of the Liquor Code or the Board’s Regulations may result in a citation being issued to the licensee by the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

The general rule is that no alcohol may be sold in Pennsylvania unless the seller holds a license issued by the Board. [47 P.S. § 4-491(1)]. The Liquor Code defines a “sale” of alcohol broadly, including any transfer of liquor (including wine), alcohol or malt or brewed beverages for a consideration [47 P.S. § 1-102]. Therefore, an exchange of a bottle of beer for another bottle of beer would be considered a “sale” and is not permissible.

However, there is an exception for home-brewed beer. The Liquor Code allows individuals to make limited amounts of malt or brewed beverages, including beer, for their own personal consumption. Malt or brewed beverages may be produced by any person without a license if such malt or brewed beverages are not produced for sale and total production does not exceed two hundred (200) gallons per calendar year. [47 P.S. § 4-492(1)]. Malt or brewed beverages produced in accordance with these provisions may be used at organized affairs, exhibitions, competitions, contests, tastings or judging if it is not sold or offered for sale. Also, there is nothing in the Liquor Code or the Board’s Regulations that prohibits an individual from bringing his or her own beer, wine or liquor (commonly called “BYOB”) into any establishment, whether or not the establishment possesses a license issued by the Board. Therefore, it is permissible for an establishment to allow patrons to exchange a bottle of homebrewed beer for another bottle of homebrewed beer as long as there is no charge or cost associated with the activity. Please note that it is not permissible for a patron to exchange a manufactured bottle of beer that was purchased by the patron for a bottle of homebrewed beer, nor is it permissible for patrons to exchange manufactured bottles of beer that were purchased by the patrons.

Please be further advised that selling, furnishing or giving alcoholic beverages, or permitting to sell, furnish or give alcoholic beverages to minors or to persons who are visibly intoxicated is prohibited by the Liquor Code. [47 P.S. § 4-493(1)]. Violation of the Liquor Code or the Board’s Regulations may result in a citation being issued to the licensee by the Pennsylvania State Police, Bureau of Liquor Control Enforcement.

If you have any additional questions regarding the Liquor Code or the Board’s Regulations, please feel free 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**

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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. 14-049