

March 31, 2014

Telephone: (717) 783-9454

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David and Jennifer Black

Re: Limited Distillery Dessert Sales

Dear Mr. and Mrs. Black:

ISSUE: This is in response to your e-mail sent on February 27, 2014, wherein you ask whether it would be permissible for your limited distillery to sell its spirits to a bakery, which would produce specialty desserts for sale by your limited distillery.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that David W. Black, Jr. and Jennifer M. Black hold Limited Distillery License No. AL-2 (LID 66649) for the premises at 93 Blackout Alley, Brookville, Pennsylvania.

OPINION: Initially, please be advised that there is nothing in the Liquor Code or the Board’s Regulations which directly addresses the sale of food made with liquor. Section 305.1 of the Liquor Code [47 P.S. § 3-305.1] prohibits the sale of confectionery containing alcohol or liquor within Pennsylvania, but does not control sales of confectionery containing alcohol or liquor out-of-state, or sales of confectionery where the amount of alcohol within the product at issue is under one-half of one percent (0.5%) by volume. “Confectionery” is not defined in the Liquor Code, nor is there any case law interpreting section 305.1 of the Liquor Code. Dictionary examples of confections include candy, preserves and sweets.

Although it is possible that “confectionery” could include anything made with sweeteners, this office has opined in the past that baked goods, such as rum cakes, which are prepared with an alcoholic beverage, would not be considered confectionery under section 305.1, especially since any alcohol is likely to evaporate once the food item is baked. Therefore, the sale of such baked items would not be precluded by section 305.1. Similar decisions have been reached over the years regarding chocolate sauce, jams, jellies, fruit preserves, condiments, marinated vegetables, Steak Diane, beer-battered fish fillets, and barbeque sauce.

However, section 505.4 of the Liquor Code allows your licensed limited distillery to manufacture and sell specialty desserts using liquor that it has produced, as you are authorized to sell liquor produced by your distillery as well as food. [47 P.S. § 5-505.4]. You could also sell liquor produced by your limited distillery to a bakery, which would produce baked goods or other desserts where the amount of alcohol within the product at

issue is under one-half of one percent (0.5%) by volume. However, such a bakery would not be permitted to sell any confectionary where the amount of alcohol within the product at issue is under one-half of one percent (0.5%) by volume; nor would such a bakery be permitted to sell any liquor whatsoever unless the bakery held a limited distillery license. [47 P.S. § 5-505.4]. That being said, the bakery could give such specialty desserts containing more than one-half of one percent (0.5%) alcohol by volume to you for sale by your distillery.

Finally, as the Pennsylvania Department of Agriculture has general oversight over the preparation and sale of food, you may wish to contact that agency, by phone at 1-866-366-3723 or via the agency's website, at <http://www.agriculture.state.pa.us>.

Please feel free to again contact this office if you have any further questions regarding this matter, the Liquor Code, or the Board's Regulations.

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. 14-112