

April 16, 2014

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Re: Follow Up to Advisory Opinion 13-499

Dear Mr. Goldstein:

ISSUE: Your e-mail of March 7, 2014, to Kimberly McKenrick of the Pennsylvania Liquor Control Board's ("Board") Bureau of Licensing ("Licensing") was forwarded to this office for response. Your e-mail included several follow up questions to this office's Advisory Opinion 13-499, which was issued in response to your letter sent via e-mail on October 9, 2013. In that e-mail, you asked several questions related to your client, who is a shareholder and member of two (2) restaurant ("R") liquor licenses: R-1175 (LID 53147) and R-7604 (LID 54015). Your client will also be an owner of a new entity that will be applying for both a brewery ("G") license and an R license at a currently unlicensed location in Pennsylvania. You would like confirmation that a G license and an R license at the new, proposed location would constitute a "couplet" and, therefore, would not be an impermissible interlocking interest with respect to your client's other two (2) R licenses.¹

In your October 9, 2013, letter, you advised that your client intends to engage in a contract brewing relationship with a licensed brewery located in another state.² You advised that your client would retain title to the products brewed by the out-of-state contract brewer, and would be the ultimate seller thereof. You asked if your client would be permitted to sell sealed bottles/cans of beer to retail patrons

¹ In your March 7, 2014, e-mail, you advise that your client would like to clarify that your client would operate a brewery in connection with an "R" license, the combination being a "couplet." This clarification is duly noted.

² In your March 7, 2014, e-mail, you advise that your client would like to clarify that your client would engage in a contract brewing arrangement with an out-of-state brewery. Both your client and the other brewery will have the requisite state and federal license. This clarification is duly noted.

for take-out of a) its own beer manufactured at the on-site brewery; b) its own beer manufactured out-of-state by the contract brewer; and c) beer manufactured by other breweries and purchased for resale at the brewery/restaurant location.

You also asked if the couplet arrangement, where the same location holds both a G license and an R license, prohibits self-distribution by the brewery and requires the use of importing distributors and distribution through the three (3)-tier system.

Finally, you asked if the beer brewed by the out-of-state contract brewer may be packaged and labeled to reflect that it was manufactured at the Pennsylvania location. You asked if there is a source of rules or regulations governing advertising, packaging and labeling in a contract brewing situation.

In your e-mail of March 7, 2014, you ask the following questions:

1. For beer produced on-site at the brewery, you ask if you are correct in assuming that an Importing Distributor is not necessary for beer sold at the brewery and at the couplet restaurant to individuals for on-premises or off-premises consumption.
2. For beer brewed out-of-state under the contract brewing arrangement, you ask if you are correct that such beer cannot be sold in the brewery under any circumstances (either on- or off-premise consumption) since it was not physically brewed there.
3. For beer brewed out-of-state under the contract brewing arrangement, you ask if all sales at the couplet restaurant (either on- or off-premise consumption) must go through an importing distributor first.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Adam K. Ritter is an officer and stockholder of Beacon on East Girard, Inc., which holds Restaurant Liquor License No. R-1175 (LID 53147) for the location at 541-543 East Girard Avenue, Philadelphia, Pennsylvania. Mr. Ritter is also identified as a member of Yetti, LLC, which holds Restaurant Liquor License No. R-7604 (LID 54015) for the premises located at 2201 Christian Street, Philadelphia, Pennsylvania.

OPINION: A G licensee may sell to individuals for off-premises consumption, in containers or packages of unlimited quantity and of any volume, beer

manufactured on its licensed premises. [47 P.S. § 4-440]. An R licensee may sell up to one hundred ninety-two (192) ounces of beer in a single sale to an individual for off-premises consumption.

When the two (2) licenses are located on the same property as in a couplet situation, unlimited sales of the G licensee's beer for off-premises consumption may occur on the G-licensed portion of the property, but sales for off-premises consumption are restricted to one hundred ninety-two (192) ounces in a single sale on the R-licensed portion of the property.

When a manufacturer obtains a retail license for the same location, thereby having a "couplet" at that location, the manufacturer may no longer self-distribute. Section 446(a)(4) provides that the "holder of a brewery license who receives a hotel liquor license, a restaurant liquor license or a malt or brewed beverages retail license to operate a brewery pub **shall not sell directly to any person licensed by this act**, except if any malt or brewed beverage is to be distributed in this Commonwealth it shall be only through specific importing distributors who shall have first been given distributing rights for such products in designated geographical areas through the distribution system required for out-of-State manufacturers under section 431(b)...." [47 P.S. § 4-446(a)(4) (emphasis added)]. If the brewery operates a brewery pub pursuant to a GP license, rather than a restaurant, hotel or retail dispenser license, the brewery is limited to selling the malt or brewed beverages it manufactures, but may continue to self-distribute.

Therefore, in response to your first question, it is not necessary for a brewery that has obtained a hotel, restaurant, or eating place retail dispenser license to use an importing distributor in order to sell beer to unlicensed individuals for consumption on or off the licensed premises. However, a brewery that has obtained a hotel, restaurant, or eating place retail dispenser license cannot sell its beer directly to other licensed entities. In such situations, the licensed entity would have to obtain the brewery's product through an importing distributor.

In response to your second and third questions, all sales of the beer manufactured by the out-of-state contract brewer must first go through an importing distributor. Such beer may only be sold, for both on- and off-premises consumption, on the R-licensed portion of the property. It cannot be sold from the G-licensed portion of the property, which may only sell for off-premises consumption, since it was not manufactured at that location.

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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. 14-150