

April 22, 2014

Jordan Stalsworth
VIA E-MAIL

RE: Purchase of Beer

Dear Mr. Stalsworth:

ISSUE: This office received your e-mail dated March 8, 2014, wherein you indicate that you are interested in procuring a beer that is not sold by the distributors from whom you procure your products. You explain that the beer is brewed and sold in Pittsburgh, Pennsylvania. You ask whether you may drive to Pittsburgh, buy a keg, and transport that keg to sell at your establishment in Philadelphia, Pennsylvania. You also ask if you would encounter any beer registration issues by procuring the beer in this manner. It is assumed, for purposes of this response, that you hold a retail license to sell alcohol.

OPINION: Retail licensees are required to purchase malt or brewed beverages (“beer”) from Board-licensed in-state manufacturers, distributors and importing distributors. You do not indicate whether you will be purchasing the beer from the manufacturer or from a distributor located in Pittsburgh. If you intend to purchase the beer from a Pittsburgh brewery, you would be able to do so provided that the brewery is licensed by the Board and has not entered into any territorial agreements that would prohibit a sale to your establishment in Philadelphia. If you intend to purchase the beer from a distributor located in Pittsburgh, please be advised that a distributor may only resell beer in strict compliance with its territorial agreements. [47 P.S. § 4-431]. Therefore, you would not be permitted to go into another territory to purchase the beer yourself if such purchase was contrary to the territorial agreement.

Additionally, please be advised that you would not be permitted to transport the beer in your vehicle. Section 492 of the Liquor Code sets forth the requirements for transporting malt or brewed beverages by a licensee. Specifically, other than an adult individual who has made a lawful purchase for their personal consumption, only the original manufacturer, a licensed distributor or a licensed transporter-for-hire may transport beer within Pennsylvania. [47 P.S. § 4-492(8); 40 Pa. Code §§ 9.1, 9.28(a)]. Thus, since the beer is not for your personal consumption, it must be transported by the original manufacturer, a licensed distributor or a licensed transporter-for-hire.

Jordan Stalsworth

April 22, 2014

Page 2

However, be advised that distributors may not sell or deliver a manufacturer's products to any person whose licensed premises is not located within the geographical area for which distributing rights have been given by the manufacturer. [47 P.S. § 4-431(b)]. A licensee, who accepts the delivery of malt or brewed beverages from a distributor that does not have distributing rights for that geographical area, shall be subject to a suspension of his license for at least thirty (30) days. [47 P.S. § 4-431(b)].

Regarding brand registration, please be advised that any beer sold within the Commonwealth of Pennsylvania must be registered with the Board. You may check whether a particular brand of beer is registered via the Board's website at www.lcb.state.pa.us. From the homepage, click on "Licensees," click on "Search Malt/Brewed Beverages," and type in the brand name or the name of the manufacturer.

Should you have any additional questions, do not hesitate to 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. 14-165