

May 14, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Kathleen T. Sutton
Owner/Operator
Oliver Square Beer and Beverage
6 Oliver Road, Suite 107
Uniontown, PA 15401-2378
randbeverage@yahoo.com

RE: Distributor Delivering Malt or Brewed Beverages to Customers

Dear Ms. Sutton:

ISSUE: This correspondence is in response to your e-mail of April 2, 2014, in which you indicate that you are the owner/operator of a small local beer distributor and you inquire as to the steps that need to be taken in order for your distributorship to deliver malt or brewed beverages to customers. Specifically, you ask whether your distributorship needs to obtain an additional permit and, if so, where to obtain one. You also ask whether your distributorship needs to put any information on its vehicles.

The Pennsylvania Liquor Control Board's ("Board") records indicate that Oliver Square Beer and Beverage holds Distributor License No. D-3607 (LID 68347) for use at the premises located at 6 Oliver Road, Suite 107, Uniontown, PA 15401-2378.

OPINION: Pursuant to section 431(b) of the Liquor Code, a distributor license authorizes the holder thereof to "sell or *deliver* malt or brewed beverages in quantities [not less than a case or original containers containing one hundred twenty-eight ounces or more] anywhere within the Commonwealth of Pennsylvania, which, . . . have been purchased only from persons licensed under this act as manufacturers or importing distributors." [47 P.S. § 4-431 (emphasis added)]. Thus, the distributor license currently held by your distributorship already allows for the delivery of malt or brewed beverages, and there is no need to obtain an additional permit.

However, pursuant to section 441(c) of the Liquor Code, distributors are prohibited from maintaining or operating any place where sales are made other than that for which the license is granted. [47 P.S. § 4-441(c)]. In other words, a licensed distributor may only make sales of malt or brewed beverages on its licensed premises. [Id.]. A “sale” is defined as “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102]. Therefore, while your distributorship is permitted to transport and deliver malt or brewed beverages to both retail licensed premises and non-licensed premises, such as a residence, the sale must have been completed at the distributor’s licensed premises prior to such delivery. It would not be permissible for the customer to pay the delivery person for the malt or brewed beverages at the time of delivery.

The hours during which distributors may deliver malt or brewed beverages are set forth in section 492.1 of the Liquor Code. [47 P.S. § 4-492.1]. According to section 492.1(b), distributors may deliver malt or brewed beverages between two o'clock antemeridian (2:00 a.m.) of any Monday and twelve o'clock midnight (12:00 a.m.) of the following Saturday to retail licensees. [47 P.S. § 4-492.1(b)(1)]. Moreover, distributors may deliver malt or brewed beverages between eight o'clock antemeridian (8:00 a.m.) and eleven o'clock postmeridian (11:00 p.m.) of any day, except Sunday, to persons not licensed or permitted by the Board, i.e., non-licensees, usually individuals. [47 P.S. § 4-492.1(b)(2)].

Additionally, pursuant to section 492.1(d), licensed distributors may, after prior arrangement, deliver malt or brewed beverages to non-licensees or the holder of a special occasion permit (“SOP”) on Sunday between the hours of nine o'clock antemeridian (9:00 a.m.) and twelve o'clock noon (12:00 p.m.). [47 P.S. § 4-492.1(d)]. The term “prior arrangement” shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two hundred fifty dollars (\$250.00) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery. [47 P.S. § 4-492.1(f)]. Delivery to retail licensees on Sunday is not permitted. [See 47 P.S. 4-492.1].

Furthermore, pursuant to section 492(9) of the Liquor Code, distributors are only permitted to deliver or transport malt or brewed beverages in “vehicles bearing the name and address and license number of such licensee painted or affixed on each side of such vehicle in letters no smaller than two inches in height.” [47 P.S. § 4-492(9)].

Finally, pursuant to section 492(11) of the Liquor Code, it is unlawful for distributors to deliver or transport any malt or brewed beverages in a vehicle in which any other commodity is being transported without first obtaining board approval. [47 P.S. § 4-492(11)].

If you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate 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 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. 14-203