

May 21, 2014

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Bill Knoch  
Keystone Business Ventures, Inc.

**RE: Distributor Questions**

Dear Mr. Knoch:

ISSUE: This office is in receipt of three (3) separate e-mails from you dated April 30, 2014 wherein you ask for a series of binding advisory opinions on behalf of a beer distributor that is represented by your firm.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Derry Beverage LLC holds Distributor License No. D-3742 (LID 61035) for premises located at 1660 Continental Blvd., Washingtonville, Pennsylvania.

OPINION: You ask a series of questions regarding the operation of a distributor licensee. Each of those issues shall be addressed in the order presented.

First, you state that the concept involves leveraging the internet and social media to allow for sales. You do not specifically indicate how these sales would be conducted, but you note that the transaction will be completed on the premises and the purchased items will be delivered to customers’ homes. You state that it is envisioned that a delivery fee will be charged at the time of the sale on premises. No cash, credit or debit card sales will be conducted at the residence of the customer. You ask whether this level of service is legal and also what specific requirements exist regarding documentation for auditing purposes.

Under the Liquor Code, licensed distributors and importing distributors are authorized to sell and deliver malt or brewed beverages in quantities of not less than a case or original containers containing one hundred twenty-eight (128) ounces or more which may be sold separately as prepared for the market by the manufacturer at the place of manufacture. [47 P.S. § 4-431(b)]. However, both the Liquor Code and the Board’s Regulations prohibit licensed distributors and importing distributors from conducting sales of malt or brewed beverages anywhere other than on their licensed

premises. [47 P.S. § 4-441(c); 40 Pa. Code § 9.95(a)]. A “sale” is defined as “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102].

Thus, to answer your question, it is permissible for licensed distributors or importing distributors to accept orders for malt or brewed beverages in the quantities referenced above via the Internet from individuals who are twenty-one (21) years of age or older and then deliver such malt or brewed beverages to the individuals at their residences, as long as the sales transactions occur and are completed at the licensed premises prior to delivery. Nevertheless, please keep in mind that there may be territorial rights issues that your distributorship should consider as well prior to engaging in these activities.

Regarding records that must be maintained, please note that sections 9.101 through 9.107 of the Board’s Regulations and Board Advisory Notice No. 2 address recordkeeping requirements for distributors and importing distributors. [40 Pa. Code §§ 9.101-9.107; Board Advisory Notice No. 2]. Section 9.101 states:

A distributor and importing distributor shall maintain and keep on the licensed premises, in hard copy or electronic media, complete and truthful records in columnar form or other compatible configuration consistent with generally accepted accounting procedures, covering in detail transactions in malt or brewed beverages and other items, particularly items described in § § 9.102—9.107 for a period of at least 2 years under section 493(12) of the Liquor Code (47 P. S. § 4-493(12)). The records shall be open to inspection by authorized representatives of the Board and the State Police, Bureau of Liquor Control Enforcement, under sections 211 and 493(21) of the Liquor Code (47 P. S. § § 2-211 and 4-493(21)). A record system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting documentation—original documents. Records shall be clearly identifiable to the licensed operation.

[40 Pa. Code § 9.101].

Please note further that Act 113 of 2011 made changes to numerous sections of the Liquor Code, including the provision dealing with licensee record keeping. Under Act 113, a licensee is only required to maintain, on its licensed premises, business records for the most recent six (6) months, may only remove those records from the licensed premises for “a lawful business purpose,” and must return those records after such business has been concluded. A licensee may maintain records off the licensed premises that are between six (6) months and two (2) years old, provided that such records are returned to the licensed premises within twenty-four (24) hours of a

request by the Board or the Pennsylvania State Police, Bureau of Liquor Control Enforcement. [47 P.S. § 4-493(12)].

It is permissible for a distributor (“D”) licensee to store its records electronically, as long as the records are kept and maintained on the licensed premises. There is nothing in the Liquor Code or the Board’s Regulations that prohibits a licensee from maintaining its records in an electronic format on the licensed premises, as long as such format fully complies with the requirements of section 493(12) of the Liquor Code. [40 Pa. Code § 9.101]. It is not permissible, however, to destroy the original documentation, or the hard paper copy of supporting documentation of your records, even after the information in those documents are converted to the “flash drive,” because section 9.101 of the Board’s regulations require entries to be verifiable by original documents. [40 Pa. Code § 9.101 (emphasis added)].

Second, you ask about eighteen (18)-year-old employees working in distributor premises. You ask whether eighteen (18)-year-olds are permitted to stock shelves and coolers. Additionally, you ask whether an eighteen (18)-year-old employee is allowed to operate the cash register and transact the sale of alcoholic beverages with or without the supervision of an adult. Further, you ask if an eighteen (18)-year-old employee is permitted to make home deliveries of alcoholic beverages. You note that with regard to delivery, no cash, credit or debit sales will be collected at the residence and that the sales will be made on premises.

Section 493(27) of the Liquor Code [47 P.S. § 4-493(27)] makes it unlawful for any distributor to employ minors under eighteen (18) years of age. Please be advised that there is no exception for employment of minor family members. Persons eighteen (18) years of age and over may be employed to both sell and deliver malt and brewed beverages. However, the Board’s Regulations do create an exception that allows for the employment of a seventeen (17)-year-old minor who has graduated from high school or who, in the opinion of the chief administrator of the school district, has not graduated but has attained his academic potential. Under these limited circumstances, a minor will be deemed to be a “minor of eighteen (18) years of age” for purposes of the Liquor Code. [40 Pa. Code § 5.14]. Please note, if such a minor is employed, Board Regulations require that the distributorship have in its possession on the licensed premises, to be produced on demand, a certified copy of the diploma or certificate of graduation of the seventeen (17)-year-old minor, or a letter from the chief administrator of the school district, on official school district stationery, stating that the seventeen (17)-year-old minor has reached his academic potential. [40 Pa. Code § 5.14]. An employee deemed to be a “minor of eighteen (18) years of age” may be employed to sell and deliver malt and brewed beverages. Additionally, since employment of minors is primarily regulated by the state’s Department of Labor and

Industry, you may wish to contact that agency as well at phone number (717) 787-5279.

Third, you inquire about the sales of Pennsylvania micro-brewed beer. You ask that since the brewery is not out of state, you ask if a D licensee can purchase directly from the manufacturer, or whether the D must obtain the beer from an importing distributor (“ID”).

A brewery (“G”) license enables the holder to “produce and manufacture malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages from the place of manufacture only in original containers, in quantities of not less than a case or original containers containing one hundred twenty-eight ounces or more which may be sold separately anywhere within the Commonwealth.” [47 P.S. § 4-431(a)]. In-state licensed manufacturers of malt or brewed beverages may choose to function as their own primary distributor or name a distributor or importing distributor as the primary or original supplier of their product. [47 P.S. § 4-431(b)]. Therefore, you would not be required to purchase product through an ID and would be permitted to purchase beer directly from an in-state manufacturer so long as doing so does not violate an existing territorial agreement.

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. 14-231