

May 21, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Matthew Goldstein, Esquire
Goldstein & McHugh, P.C.
Constitution Place
325 Chestnut Street, Suite 713A
Philadelphia, PA 19106

Re: Common Control of Brewery Products

Dear Mr. Goldstein:

ISSUE: This office is in receipt of your e-mail dated April 28, 2014, wherein you request an Advisory Opinion on behalf of an unnamed licensee. Specifically you state that you represent the holder of a brewery pub (“GP”) license issued in connection with its adjacent brewery (“G”) premises. You note that it is clear that your client may sell beer at the brewery pub that it manufactured at its adjacent brewery. However, you cite to section 3.92(d) of the Pennsylvania Liquor Control Board’s (“Board”) Regulations [40 Pa. Code 3.92(d)], which states: “Sales of alcoholic beverages at the brewery pub premises shall be limited to sales of malt or brewed beverages produced at and owned by the brewery adjacent to it or a brewery which is under common control with the brewery pub.”

You go on to state that the use of the word “or” implies that a licensed brewery pub may also sell beer manufactured by a brewery that is not adjacent to the brewpub, provided that the brewery is under “common control” with the brewery pub.

In your e-mail you present a fact pattern with associated questions, which will be addressed in the order presented.

OPINION: In your fact pattern, your client owns a brewery and a brewery pub (“Premises A”) and a second location that is not adjacent to Premises A with a brewery only (“Premises B”). Ownership of the two (2) breweries is identical. You ask whether the brewery pub at Premises A would be permitted to sell beer manufactured by both breweries at Premises A and Premises B.

Yes. Section 3.92 was revised in 2011 to specifically allow for the scenario you described above. The Board recognized that the growth of “craft” brewing of beer in Pennsylvania had reached a point where certain breweries could no longer supply the demand for their beer at their brewery pubs from the capacity of the adjacent brewery. While the logical solution was for the brewery to open another brewery to supply beer to the brewery pub, the Board’s Regulations at the time precluded the sale of beer produced at a second brewery by the original brewery pub because the second brewery would not be deemed adjacent to the original brewery pub. The regulatory change resolved the issue by permitting the brewery pub to sell beer owned by the brewery, no matter where the beer is produced.

In your e-mail you further ask if there is a difference between “common control” and “common ownership.” Specifically, you ask if it would be permissible for the brewery at Premises B to have its beer sold at the Premises A brewery pub if the brewery and the brewery pub were different legal entities but each shared fifty-one percent (51%) common ownership.

No. Common control is interpreted by this office as having the same meaning as common ownership. In order for the brewery pub located on Premises A to sell beer produced by a brewery located on Premises B, both the brewery pub and the brewery must have the same owners. As stated above, the intention of the Board in revising section 3.92 was to allow for the expansion of brewery operations to meet growing demand by removing the requirement that the brewery pub be physically adjacent to the source of manufacture. The intention was not to expand the source of outlets from which a brewery pub licensee could obtain beer. Section 446(a)(1) of the Liquor Code empowers breweries to sell “malt or brewed beverages produced and owned by the brewery under such conditions and regulations as the board may enforce....” [47 P.S. § 4-446(a)(1)]. The Board has established, as a condition, that a brewery license must obtain a brewery pub license in order to sell beer for consumption on the licensed premises. Brewery pubs, therefore, are inexorably tied to the limitations placed on the brewery regarding the sale of beer. Because section 446(a)(1) only allows for the sale of beer ***produced and owned by the brewery***, a brewery pub may only sell beer produced by breweries with the same owners.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR

Matthew Goldstein, Esquire

May 21, 2014

Page 3

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. 14-232