

July 18, 2014

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**RE: G and GP Applications of Neuheimer Brewing Co., LLC**

Dear Mr. Baldwin:

ISSUE: This office is in receipt of your letter dated June 3, 2014, wherein you indicate that your office serves as general counsel to Neuheimer Brewing Co., LLC (“Neuheimer Brewing”) and its principal, Kyle Neuheimer. You note that Mr. Neuheimer applied for both a brewery (“G”) license and a brewery pub (“GP”) in July of 2013.

You note in your letter that a neighboring license holder, Oakbrook Fire Company Engine 14 Relief Association, filed objections to the GP license application, based in part on setback requirements. You further noted that the consensus of the Office of Chief Counsel at the time, set forth in Advisory Opinion No. 2013-097, was that the usual proximity limitations do not apply to GP licenses, per section 431(a) of the Liquor Code. At this point, you are concerned that there may be some lack of consensus on this issue within the PLCB and that this lack of consensus is holding up action on both GP license and the G license. You suggest that this possible lack of consensus on the GP license should not hold up action on the G license and you request that the Pennsylvania Liquor Control Board (“Board”) schedule a hearing on the GP application so that any remaining question as to the application of the proximity limitations can be resolved through the hearing process.

OPINION: At the outset, this Office understands from speaking to the Board’s Bureau of Licensing (“Licensing”) that the application for a new G license filed by Neuheimer Brewing was approved subject to conditions on June 27, 2014. Accordingly, that matter has been resolved.

Regarding your client’s application for GP license, you are correct that there has been a reversal of the position taken in Advisory Opinion No. 2013-097 and it is the position of the Board that proximity issues are relevant in GP application. As you know, pursuant to

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section 3.92 of the Board's Regulations, the Board is authorized to issue a GP license to the holder of a brewery license. [40 Pa. Code § 3.92]. The holder of a GP license has all the rights and is subject to the same conditions and qualifications as those imposed on holders of an eating place retail dispenser ("E") license, except as set forth in section 3.92. [Id.]. Regarding such licenses, section 432(d) of the Liquor Code [47 P.S. § 4-432(d)] provides that:

The board shall, in its discretion, grant or refuse any new license, the transfer of any license to a new location or the extension of an existing license to cover an additional area if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license, transfer or extension is applied for a place which is within two hundred feet of any other premises which is licensed by the board.

It is therefore the position of the Board that proximity issues are relevant. Accordingly, this Office understands that Licensing is processing your client's application and that a hearing will be scheduled in the near future.

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. 14-427