

July 18, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Scott Eden, Esquire  
57 W. Market Street  
York, PA 17401-1233

**Re: Branded Bourbon Bottle Questions**

Dear Mr. Eden:

ISSUE: This office is in receipt of your e-mail dated June 20, 2014, wherein you indicate that you hold a restaurant liquor license. A liquor wholesaler has presented a deal where you can buy a barrel of Knob Creek bourbon that will be branded as a single barrel bourbon specifically for your establishment. You state that this is equivalent to about one hundred fifty-two (152) bottles of bourbon that is delivered to a Pennsylvania Liquor Control Board ("Board") wine and spirits store as a special liquor order.

You state that as part of the promotion, the wholesaler suggests that you do a number of events where you have a beer pairing, dinner and bourbon tasting at which you would provide a complimentary bottle of bourbon as part of the ticket price. You indicate that while the wholesaler has assured you that this is a permissible practice you believe it is unlawful because it would be constructively selling a bottle of spirits from your licensed establishment.

You note that you understand that you can lawfully sell a full bottle of spirits to a customer, but that unlike wine which can be re-corked and taken off premises when purchased as part of meal, the bottle of spirits cannot be taken off premises. You recognize that this would call for the customer to either finish the entire bottle on the premises or for you to keep the bottle on premises so that the customer can drink from the bottle when they come back into the establishment.

You conclude by asking two (2) questions. First, you ask if you can give a complimentary bottle of bourbon to a ticket holder in the scenario mentioned above. Second, you ask if you can sell a patron an entire bottle and then have the bottle tagged and stored on the premises so that the patron can drink from the bottle each time they come into the premises.

Records maintained by the Board indicate that Craft Beer Taproom LLC holds Restaurant Liquor License No. R-18371 (LID 66083) for use by it premises located at 57 West Market Street, York, Pennsylvania.

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OPINION: Regarding your first question, you are correct that you would not be permitted to give a complimentary bottle of bourbon to a ticket holder. Indeed, the giving away of a bottle would be prohibited for both on-premises and off-premises consumption.

Under the Liquor Code, only the Board, limited distilleries and distilleries of historical significance are afforded the statutory ability to operate as a direct retailer of spirits to consumers for off premises consumption. Restaurant liquor licensees do not have this ability. Therefore, you could not provide a bottle of bourbon for off-premises consumption.

Moreover, you would be prohibited from providing a complimentary bottle of bourbon for on-premises consumption. Section 493(24)(i) prohibits any licensee from offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)]. However, retail licensees may give to or purchase for consumers one (1) standard-size alcoholic beverage on retail licensed premises provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverages. [40 Pa. Code § 13.53]. Bar spending or free drinks are limited to one (1) alcoholic beverage per patron in any such offering. A standard-size alcoholic beverage is twelve (12) fluid ounces of a malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one-half (1½) fluid ounces of liquor. [40 Pa. Code § 13.53]. An entire bottle of bourbon would exceed the maximum quantities that a licensee is permitted to give away under the Board's Regulations.

Regarding your second inquiry, as you noted, there is nothing in the Liquor Code that limits the quantity of liquor that a licensee may sell in a single purchase for consumption on the licensed premises. A restaurant licensee may sell whole bottles, regardless of size, to patrons so long as care is taken to avoid any violations of the Liquor Code or the Board's Regulations (including providing alcohol to minors or persons who are visibly intoxicated) that occur on your premises even after a bottle is sold to a customer. [47 P.S. § 4-493(1)].

As discussed, restaurant licensees are not permitted to sell liquor for off-premises consumption. While patrons of a licensed restaurant can remove re-corked, partially consumed bottles of wine under certain circumstances [47 P.S. § 4-406(e)], there is no legal provision permitting the removal of partially consumed bottles of spirits from licensed premises. Therefore, you are correct that it would be unlawful for you to allow customers to remove partially consumed bottles of spirits from the premises.

There is nothing in the Liquor Code which precludes a licensee from temporarily storing alcohol that belongs to another entity. While there are provisions in the Crimes Code

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pertaining to when storage of alcohol may occur on unlicensed premises, those provisions do not apply to licensed premises. Therefore, it would be permissible for the bourbon in question to be stored on a temporary basis at your licensed premises so long as the storage is of a temporary duration and there is no fee collected by you for this service. These arrangements are a matter of contract law between the licensee and the patron and are not regulated by the Board. Further, there is nothing in the Liquor Code or Board Regulations that would prohibit a licensee from selling a bottle of bourbon to be tagged for a specific patron and stored at the premises for consumption at a later date. Please note that if you wish to charge customers for storage of these bottles you would be required to obtain a bailee-for-hire license from the Board. Please contact the Board's Bureau of Licensing at (717)783-8250 if you have any questions obtaining a bailee-for-hire license.

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. 14-428