

July 21, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Max Rutkowski, Esquire

Re: Sale of Items by a Distributor

Dear Mr. Rutkowski:

ISSUE: This is in response to your e-mail sent on June 4, 2014, wherein you advise that you represent Deon Beverages, Inc., which holds a distributor license. Your client wants to know if it can sell items that are not listed on the Pennsylvania Liquor Control Board's ("Board") Advisory Notice No. 9 (5th Revision). The items your client would like to sell are provided in the table below, along with, in some cases, a reference to what you perceive to be a similar item that is listed as permissible on Advisory Notice No. 9:

Requested Items	Permitted by Advisory Notice No. 9
Frozen prepackaged meats and poultry	Frozen seafood/steamed crabs
Fresh eggs (carton), yogurt, whipped cream, cottage cheese (any or all)	Milk, cheese, pickled eggs
Frozen prepackaged dinners (i.e., TV dinners, microwaveable sandwiches, etc.)	
Prepackaged cereals	
Paper towels and toilet paper (either or both)	Napkins

In addition, you note that "hot dogs and rolls" are permitted on Advisory Notice No. 9, but ask if that permits the sale of prepackaged hot dogs (i.e., frozen) and prepackaged rolls as well as the sale of prepared (on the premises) hot dogs on rolls.

Finally, you also note that Advisory Notice No. 9 permits the sale of frozen pizza, and permits the use of heating and roasting devices in conjunction with snack

items. You ask if it is permissible to heat and then sell the formerly frozen pizza on the licensed premises.

Records of the Board indicate that Deon Beverages, Inc., holds Distributor License No. D-3938 (LID 8574) for the premises at 1020 Route 13, Bristol, Pennsylvania.

OPINION: Generally, a licensee is prohibited from conducting another business on its licensed premises, except with Board approval. Further, a distributor may not engage in any other business, other than the business of selling malt or brewed beverages, without Board approval. [41 P.S. § 4-492(12)].

Throughout the years, the Board has received numerous requests from distributors and importing distributors to engage in the sale or rental of additional items. The Board's Advisory Notice No. 9 (5th Revision), dated April 25, 2012, lists the items which the Board has considered and either granted or denied approval for distributors and importing distributors to sell or rent, as well as specifies to whom the items may be sold or rented (i.e., the general public and/or other licensees of the Board).

With regard to the items listed in the table above, your request to sell these items will be submitted to the Board for its approval. You will be notified in writing as to the Board's decision.

With regard to the sale of hot dogs, Advisory Notice No. 9 refers to the sale of prepackaged hot dogs and prepackaged hot dog rolls. In the past, this office has approved the sale of already prepared hot dogs on rolls in conjunction with a charity fundraiser (Advisory Opinion No. 11-407), a community event (Advisory Opinion No. 10-245), a customer appreciation day (Advisory Opinion No. 10-194), and as a fundraiser for a school trip (Advisory Opinion No. 08-204). Note that approval was granted because the sale of prepared hot dogs would be occurring on singular occasions and would not constitute operating another business. While the everyday sale of prepared hot dogs has not previously been approved, your request will be submitted to the three (3)-member Board for their consideration at the next scheduled Board meeting. This office will subsequently advise you of the Board's decision.

With regard to pizza, the Board has allowed distributor licensees to sell frozen pizzas without requiring any additional Board approval. [Advisory Notice No. 9 (5th Revision)]. Although the Board has previously denied a request for approval

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to sell prepared pizza and other warm foods, please be advised that your client's request to sell prepared pizzas will be submitted to the three (3)-member Board for their consideration at the next scheduled Board meeting. This office will subsequently advise you of the Board's decision.

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.14-430