

September 15, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Denise Mathias

**Re: Selling Drinks and Other Items**

Dear Ms. Mathias:

ISSUE: This is in response to your letter received in this office on August 18, 2014, wherein you ask about the amount of alcohol a limited distillery may sell. You note that in section 505.4(b)(5), the Liquor Code provides that limited distillery licensees “may provide tasting samples of liquor that in total do not exceed one and one-half (1½) fluid ounces per person.” [47 P.S. § 5-505.4(b)(5)]. But section 505.4 also states that limited distillery licensees “may sell by the glass...only liquor that may otherwise be sold by the bottle.” [47 P.S. § 5-505.4(b)(4)]. You ask if your limited distillery may sell drinks made with your distilled spirits, above and beyond the one and one-half (1½) ounce tasting limit per day.

You also note that many wineries and distilleries are selling “complimentary products” in their tasting rooms from other small businesses, such as dips, salsas, drink mixers, jewelry, crafts, paintings, etc. You support the idea of assisting other small businesses, but you want to know if you can legally allow them to have a small display at your location. You ask for guidance as to what is allowed and what is not allowed, and what steps you would need to take to allow someone to set up a small display.

Records of the Pennsylvania Liquor Control Board (“Board”) provide that Old Republic Distillery, Inc., holds Limited Distillery License No. AL-6 (LID 67272) for the premises located at 47 Cherry Street, Seven Valleys, Pennsylvania.

OPINION: The tasting samples referred to in section 505.4(b)(5) are a different type of sale than what is contemplated in section 505.4(b)(4). A patron may only have a total of one and one-half (1½) ounces in tasting samples that are simply intended to give the patron a taste of the product. In addition to tasting samples, a limited distillery may sell by the glass, for consumption on the premises, any liquor it has manufactured. This section of the Liquor Code does not provide a limitation

as to quantity, but please be aware that section 493(1) prohibits the sale of alcohol to an individual who is visibly intoxicated. [47 P.S. § 4-493(1)].

With regard to your second question, the Board's Regulations provide the following guidance for limited distilleries:

(b) In addition to the sale of liquor, the following items are permitted to be offered for sale on the licensed premises:

(1) Liquor accessories as follows:

- i. Cork removers and other bottle openers.
- ii. Glasses, shot glasses, decanters and flasks.
- iii. Pourers and bottle stoppers.
- iv. Cocktail mixers, shakers and other cocktail preparation accessories.
- v. Cocktail forks, toothpicks, stirrers, napkins and gift bags.

(2) Publications dealing with liquor.

(3) Promotional items advertising the limited distillery or distillery such as tee shirts, glassware, caps, and the like.

[40 Pa. Code § 11.221(b)]. Please note that the sales of any items that are not listed in subsection (b) are subject to Board approval. [40 Pa. Code § 11.221(c)]. The approval shall be requested by letter addressed to the Board. [Id.]. A limited distillery or distillery licensee will be advised of approved items through an appropriate means of dissemination. [Id.].

In addition, such sales are only permissible when the limited distillery buys the items on a wholesale basis and then re-sells those items. A licensee may not permit other persons to operate another business on the licensed premises. [40 Pa. Code § 3.52(a)]. Therefore, you would not be permitted to allow another business to use a portion of your premises to set up a display of its products.

If there were an area, separate from the licensed premises, where another business would sell items, please be aware that section 3.52(b) likewise prohibits “an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board.” [40 Pa. Code § 3.52(b)]. If the Board approves such an interior connection, “the extent of the licensed area shall be clearly indicated by a permanent partition at least 4 feet in height.” [40 Pa. Code § 3.54].

Please feel free to contact this office if you have any further questions.

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. 14-509