

September 15, 2014

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Rebekah Lenig  
Irish Pot of Gold Beer Distributor  
911 West Arch Street  
Coal Township, PA 17866

**RE: Record Keeping**

Dear Ms. Lenig:

ISSUE: This is in response to your letter which was received by this office on August 13, 2014, in which you state that “PLCB agents” conducted an inspection of your property on August 11, 2014. It is assumed for purposes of this response that you are referring to agents with Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”).

You indicate that during the inspection, the Bureau told you that, in addition to the computer records of your customer’s names and addresses, you also need to keep a carbon paper copy for every sale of four (4) or more cases and for sales of kegs. You explain that you have not been keeping carbon paper copies of your sales since the passage of Act 113 of 2011. You point to section 441(i) of the Liquor Code in support of your decision to maintain only electronic records. Therefore, you ask for clarification on this section. You also ask whether you still need to keep paper records for every sale of four (4) or more cases and for sales of kegs.

The records of the Pennsylvania Liquor Control Board (“Board”) indicate that Irish Pot of Gold Beer Distributor, LLC holds Importing Distributor License No. ID-750 (LID No. 61670) for use by it at the premises located at 911 West Arch Street, Coal Township, Pennsylvania.

OPINION: As you might be aware, citations under the Liquor Code are issued by the Bureau, and not the Board. The Bureau is charged with the duty of enforcing the Liquor Code and the Board’s Regulations. The Board acts as an appellate body if a licensee or the Bureau appeals from an adverse ruling on a citation matter.

Because of its role as an appellate body in citation cases, the Board is precluded from commenting on any pending citation or violation. Therefore, the following information is provided pursuant to your request for general guidance going forward, rather than as it may relate to the facts alleged in any pending citation[s] for past conduct.

For your general information, on December 22, 2011, Governor Corbett signed House Bill No. 242 (P.N. 2815), now known as Act 113 of 2011 (“the Act”), into law. The Act made changes to numerous sections of the Liquor Code, including the provision dealing with Licensee record keeping. Pursuant to the Act, distributors and importing distributors are no longer required to collect the name or address of private individuals who purchase malt or brewed beverages. [47 P.S. § 4-441(i)]. Specifically, new subsection 441(i) of the Liquor Code provides:

Notwithstanding any other provision to the contrary, when making a sale of malt or brewed beverages to a private individual, no distributor or importing distributor may be required to collect the name, address or any other identifying information of the private individual for the purpose of keeping a record of the quantity of cases or volume of malt or brewed beverages purchased.

[Id.]. However, be advised that distributors and importing distributors are still required to comply with all other provisions of the Board’s Regulations related to sales invoices.

Be advised that sections 9.101 through 9.107 of the Board’s Regulations and Board Advisory Notice No. 2 address recordkeeping requirements for distributors and importing distributors. [40 Pa. Code §§ 9.101-9.107; Board Advisory Notice No. 2]. Section 9.101 states:

A distributor and importing distributor shall maintain and keep on the licensed premises, in hard copy or electronic media, complete and truthful records in columnar form or other compatible configuration consistent with generally accepted accounting procedures, covering in detail transactions in malt or brewed beverages and other items, particularly items described in §§ 9.102 - 9.107 for a period of at least 2 years under section 493(12) of the Liquor Code (47 P.S. § 4-493(12)). The records shall be open to inspection by authorized representatives of the Board and the State Police, Bureau of Liquor

Control Enforcement, under sections 211 and 493(21) of the Liquor Code (47 P.S. §§ 2-211 and 4-493(21)). A record system utilized by the licensee shall have the capability to provide for the reconciling of required data. Entries shall be verifiable by supporting documentation - original documents. Records shall be clearly identifiable to the licensed operation.

[40 Pa. Code § 9.101].

Under the Act, a licensee is only required to maintain, on its licensed premises, business records for the most recent six (6) months, and may only remove those records from the licensed premises for “a lawful business purpose,” and must return those records after such business has been concluded. A licensee may maintain records off the licensed premises that are between six (6) months and two (2) years old, provided that such records are returned to the licensed premises within twenty-four (24) hours of a request by the Board or the Pennsylvania State Police, Bureau of Liquor Control Enforcement. [47 P.S. § 4-493(12)].

Based on the language of the Board’s Regulations, it would be permissible for you to store your records electronically, as long as they are kept and maintained on the licensed premises. There is nothing in the Liquor Code or the Board’s Regulations that prohibits a licensee from maintaining its records in an electronic format on the licensed premises, as long as such format fully complies with the requirements of section 493(12) of the Liquor Code, as cited above, since electronic record keeping is typically acceptable under the Board’s Regulations. [See 40 Pa. Code §§ 5.101 (allowing electronic record keeping for breweries); 5.102 (bonded warehouses); 5.103 (limited wineries); 5.73 (clubs); 9.13 (transporter-for-hire); 9.101 (importing distributors and distributors); 11.35 (permittee); 11.84 (sacramental wine licensees)].

However, it is not permissible to destroy the original documentation, or the hard paper copy of supporting documentation of your records, even after the information in those documents is converted to electronic storage, because section 9.101 of the Board’s Regulations requires entries to be verifiable by original documents. [40 Pa. Code § 9.101]. Therefore, you would not be permitted to destroy the carbon paper copies if these are the supporting documentation of your records for sales of four (4) or more cases and for sales of kegs, notwithstanding the fact that you are no longer required to collect the name, address, and other buyer identifying information for certain purchases.

Should you have any additional questions, do not hesitate to contact this office.

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. 14-512