

October 27, 2014

Paul Mulherin
13 East Montgomery Avenue
Suite 2
Hatboro, PA 19040-2618

RE: Breweries Selling Pints

Dear Mr. Mulherin:

ISSUE: This office is in receipt of your e-mail dated September, 26, 2014, wherein you ask whether a brewery can sell in pint quantities. You also ask if there are any additional licenses that would allow you to do so without the need to serve food.

Records maintained by the Pennsylvania Liquor Board (“Board”) indicate that you are a member of Crooked Eye Brewery, LLC, which holds Brewery License No. G-528 (LID 69140) for premises located at 13 East Montgomery Avenue, Suite 2, Hatboro, Pennsylvania.

OPINION: Generally, a brewery may sell malt or brewed beverages produced and owned by the brewery to individuals for off-premises consumption in containers or packages of unlimited quantity and of any volume, and to licensees in quantities of not less than a case or original containers containing one hundred twenty-eight (128) ounces or more. [47 P.S. §§ 4-431, 4-440]. A brewery may sell its product for on-premises consumption only in compliance with Section 446(a)(1) of the Liquor Code. [47 P.S. § 4-446(a)(1)]. This section requires that these sales be conducted under such conditions and regulations as the Board may enforce. [Id.] Currently, the Board requires that a brewery wishing to sell malt or brewed beverages for on-premises consumption acquire a brewery-pub license. [40 Pa. Code § 3.92]. The holders of a brewery-pub license shall have all the rights and be subject to the same conditions and qualifications as those imposed on holders of an eating place retail dispenser license, except as set forth in section 3.92.

An eating place is defined by the Liquor Code as “a premise where food is regularly and customarily prepared and sold, having a total area of not less than three hundred square feet available to the public...equipped with tables and chairs, including bar seats, accommodating thirty persons at one time. [47 P.S. § 1-102].

Therefore, in response to your specific question, you may only sell pints to individuals for on-premises consumption if you obtain a brewery-pub license. Such license requires the preparation and sale of food. No license exists that would allow on-premises consumption by your brewery without food.

Please note, however, that the Board recently approved a proposed regulatory change that would allow a brewery that does not hold a brewery pub, restaurant liquor, eating place retail dispenser or hotel license for use on the licensed premises under certain conditions. More specifically, if approved, the new regulation will enable the holder of a brewery license to allow on-premises consumption of alcohol under the following conditions:

- (1) Such consumption may occur only between 10:00 a.m. and midnight;
- (2) The only alcohol that may be consumed on the licensed premises shall be the malt or brewed beverages produced on the licensed premises by the brewery;
- (3) The brewery must have at least ten (10) seats on the licensed premises for use by patrons while they are consuming alcohol; and
- (4) The brewery must make food available to each patron who is consuming alcohol on the licensed premises, while that person is consuming alcohol. Such food shall, at a minimum, consist of potato chips, pretzels, and other similar foods. Such food may be prepared by the brewery or by a third party.

Please be advised that while this proposed regulation has been approved by the Board, it has not been finalized through the required regulatory review process. Until such regulation is formally approved, malt or brewed beverages cannot be served on the premises of a brewery unless the brewery also holds a brewery pub, restaurant, hotel or retail dispenser license.

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Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to again contact this office.

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. 14-564