

December 23, 2014

Jaron Shimmel
General Manager
Shrewsbury Beer & Soda
537 South Main Street
Shrewsbury, PA 17361
VIA FAX: 717-235-3372

RE: Distributor Drive-Through Sales

Dear Mr. Shimmel:

ISSUE: This correspondence is in response to your letter which was received on November 5, 2014, wherein you explain that your business currently holds a distributor license but is considering the possibility of moving and operating as a drive-through distributorship. Accordingly, you ask whether it would be legal for your business to operate as a drive-through distributorship in Pennsylvania.

The Pennsylvania Liquor Control Board's ("Board") records indicate that Holman Thomas LLC, t/a Shrewsbury Beer & Soda, holds Distributor License No. D-2574 (LID 56865) for use at the premises located at 537 South Main Street, Shrewsbury, Pennsylvania.

OPINION: Section 441(c) of the Liquor Code provides that no distributor may maintain or operate any place where sales are made other than that for which the license is granted. [47 P.S. § 4-441(c)]. Moreover, section 9.95(a) of the Board's Regulations requires that sales of malt or brewed beverages may not be made at any place except those on which the principal office or place of business of a licensee is maintained, and delivery may only be made from the licensed premises of the distributor. [40 Pa. Code § 9.95(a)].

While neither the Liquor Code nor the Board's Regulations specifically permit or prohibit drive-through sales from a licensed distributorship, the Commonwealth Court's decision in Pennsylvania Liquor Control Board v. Burrell Food Systems, Inc., 508 A.2d 1308 (Pa. Cmwlth. 1986), affirmed the Board's policy of refusing

drive-through sales. However, the reason for refusing drive-through sales, in nearly all cases, was that the actual sale of the malt or brewed beverages would be taking place off the licensed part of the premises, an act which is clearly prohibited by the laws previously discussed above. Any areas located outside the windows, doors, loading dock, or in the parking lot of licensed premises are typically not considered part of the licensed premises. If a drive-through area were to be contained entirely within the licensed premises, then sales of malt or brewed beverages from that area would be permissible.

Therefore, if your intention is to create a place in which customers can make purchases of malt or brewed beverages without ever leaving their vehicles, you would be required to have the area which customers are driving through with their vehicles included as part of the licensed premises. If, on the other hand, your intention is to use a drive-through area solely for the purposes of delivering malt or brewed beverages to customers after they have already purchased those products inside the licensed premises, and no sales actually take place in the drive through area, there is nothing that would require the drive-through area to be licensed under this scenario.

Should your business remain at its current location, you would need to file an "Application for Extension to Cover Additional Premises" in order to have any new areas added to the licensed premises. However, if you are planning to move the location of your business to a new location altogether, then you could simply designate all of the areas that you are seeking to have licensed, including a drive-through area, during the license transfer process. You may obtain the necessary forms by contacting the Board's Bureau of Licensing at 717-783-8250 or by visiting the Board's website, www.lcb.state.pa.us, placing your cursor over "Licensees," followed by "Applications/Forms Overview," selecting "Forms," and then choosing the appropriate form from the list.

Should you have any additional questions regarding this matter, the Liquor Code, or the Board's Regulations, please do not hesitate to again 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

Jaron Shimmel
December 23, 2014
Page 3

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. 14-630