

February 26, 2015

Nate Willing

RE: Brewery Licenses Questions

Dear Mr. Willing:

ISSUE: This office is in receipt of your e-mail dated January 23, 2015, wherein you indicate that you are in the final stages of becoming a brewery (“G”) licensee in Lancaster County and you have a few questions.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Chiques Rock Brewing holds Brewery License No. G-559 (LID 70384) for premises located at 113-117 West Market Street, Marietta, Pennsylvania.

OPINION: Your correspondence poses a series of questions. These questions shall be addressed in the order presented.

- (1) Is a G licensee prohibited from selling samples for consumption on the licensed premises? If you are permitted to sell samples, what is the maximum amount that can be provided at one time?

As you appear to be aware, under the Board’s current regulations you would be required to obtain a G and a brewery pub (“GP”) license in order to brew and sell beer for on-premises consumption. Therefore, if you only possess a G license, you would be prohibited from selling any beer for on-premises consumption, including the selling of samples or tastings. Please note that a regulation is currently pending that would allow a G licensee to sell beer it produces on-premises without the need for a GP license; however, that regulation has not yet been finally approved.

Please further note that while you are not permitted to sell beer for on-premises consumption, you are permitted to conduct free tastings. Generally, tastings may be conducted by sponsors upon *licensed* or unlicensed premises. [40 Pa. Code § 13.211(a)]. A sponsor of a tasting event may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one (21) years of age or older. [40 Pa. Code § 13.201].

For tasting events conducted by sponsors, products used must be properly procured and registered, and taxes on the products must be paid. [40 Pa. Code §

13.211(b)(1)]. Products offered must not exceed a standard size alcoholic beverage for that product. Board Regulations provide that a standard-sized alcoholic beverage for beer is twelve (12) fluid ounces of malt or brewed beverage. [40 Pa. Code § 13.201]. Most important to your present inquiry, there can be no purchase requirement associated with such tasting. [40 Pa. Code § 13.211(b)(2)].

- (2) You indicate that your establishment will be setup as a self-distribution brewery. You ask if the brewery can conduct retail sales on the premises. If so, in what quantities may you sell your product.

A G license entitles its holder to produce malt or brewed beverages and to transport, sell and deliver those malt or brewed beverages. [47 P.S. § 4-431(a)]. In response to your inquiry, 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].

Therefore, for example, you would be permitted to sell a growler containing sixty-four (64) or thirty-two (32) fluid ounces to individuals for off-premises consumption, but not to licensees. There is no maximum quantity or limitation on the amount that you can sell for off-premises consumption. However, please be advised that you may not serve visibly intoxicated individuals.

- (3) You indicate that you have been asked to provide beer for sale at upcoming events over the next year. For example, you indicate that there is a street festival this fall in Columbia Borough. You ask if you would be permitted to sell “open beer” for consumption at these events. For purposes of this response it is assumed that by “open beer” you mean sales by the glass.

Unlike limited wineries, which can obtain a wine exposition permit to sell their products at wine festivals in addition to serving tastings [see 47 P.S. § 5-505.2(4)], there is no equivalent provision in the Liquor Code regarding malt or brewed beverage manufacturers and beer festivals. Therefore, you would not be permitted to simply sell your beer by the glass at a street festival or other event. However, tastings may be conducted as outlined above.

Please note, however, that the holder of a brewery pub license is permitted to obtain an off-premises catering permit that would allow for a catered function off the licensed premises and on otherwise unlicensed locations. [47 P.S. § 4-446(b)]. This permit would allow for the sale of beer by the glass, open bottle or other container. [Id.]. As noted, you would first be required to obtain a brewery pub license before your brewery would be qualified to obtain this permit. Additionally, please note that these catered functions must be conducted for a third party, not self-sponsored by the licensee. Lastly, as the holder of the permit, you would be liable for any service to minors or visibly intoxicated individuals.

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
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LCB Advisory Opinion No. 15-055