

February 23, 2015

Paola Lambert

RE: Specifics Regarding Transporter-for-Hire License

Dear Ms. Lambert:

ISSUE: This is in response to your e-mail dated January 23, 2015, in which you ask a series of questions relating to the operation of both a restaurant license and a transporter-for-hire license. A telephone conversation on January 27, 2015 served to clarify your questions as follows:

1. How should registration be held for a vehicle used by a transporter-for-hire licensee?
2. May a transporter-for-hire licensee permit its delivery drivers to use their personal vehicles to deliver alcohol or must the licensee have dedicated company vehicles?
3. Must any vehicle used by a transporter-for-hire licensee have exterior identification (such as a “cling”) noting the LID number, the licensee address, etc?
4. Does a licensee’s liability for service to minors extend only to the person who called in and paid for beer over the telephone, or must a delivery driver see identification for everyone in the house where the beer is delivered?
5. Is there a limit to how many transactions one (1) person may make, assuming that each purchase is made separately?
6. May you have a house rule requiring a minimum order of five dollars (\$5.00)?
7. Are there any other important guidelines to lawful operation of which you should be aware?

During the telephone conversation, you expressed your clear understanding that a completed sale of alcohol by the restaurant licensee must occur before the transporter-for-hire licensee may take possession of the beer and deliver it to the paying customer. You understand that such a sale may be made by processing a proffered payment card during the course of a telephone order.

Pennsylvania Liquor Control Board (“Board”) records indicate that Camillo Ciaravino, trading as Camillo’s Italian Restaurant, currently holds Restaurant Liquor License No. R-19102 (LID 47690) for use by it at premises located at 264 Greenwich Street, Kutztown, Pennsylvania. You are the Board-approved manager/steward for this licensee. Additionally, Board records indicate that the same entity has been granted Transporter-for-Hire Class B License No. IB-4382 (LID 70969), with the same address and other identifying information as the restaurant licensee.

OPINION: As you know, a retail license does not authorize the licensee to deliver alcohol. Section 501 of the Liquor Code requires a license issued by the Board in order to transport-for-hire any alcoholic beverages within the Commonwealth. [47 P.S. § 5-501]. Therefore, if a retail licensee wants to deliver alcohol for off-premises consumption, the retail licensee must also acquire a transporter-for-hire license. There is nothing in the Liquor Code that prohibits a retail licensee from applying for or holding a transporter-for-hire license. However, be advised that it is the Board’s Bureau of Licensing (“Licensing”) initially, and the three (3)-member Board ultimately, that decide whether to grant a particular license application.

There are three (3) types of transporter-for-hire licenses issued by the Board. You are applying for a Transporter-for-Hire Class B license, which allows the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. [40 Pa. Code § 9.11].

As noted, you are aware that if you obtain a transporter-for-hire license, you would be permitted to transport beer to a customer’s home provided that the sale was completed by the restaurant licensee on its licensed premises before the delivery by the transporter-for-hire licensee occurs. [47 P.S. §§ 1-102; 4-401(a); 4-492(2)-(4)]. It would not be permissible for the customer to pay the delivery person for alcohol, as that would clearly be a sale occurring off of the licensed premises. Please note that customers may tip the delivery person if they so choose, since tipping is optional and is not considered the off-premises sale of alcohol.

In response to your first and second questions concerning ownership and registration of vehicles used by a transporter-for-hire to make deliveries, pursuant to section 9.28(a) of the Board’s Regulations, a licensed transporter-for-hire of any

class must either own or lease its vehicles, or must have an employment or contractor relationship with the owner of the vehicle. [40 Pa. Code § 9.28(a)]. If the vehicle is not owned or leased directly by the license holder, then some written evidence of the employment of or contract with the owner of the vehicle should be maintained as part of the licensee's records.

In response to your third question regarding identification on vehicles, section 491(12) of the Liquor Code requires each vehicle used in the lawful transportation of alcohol to bear the licensee's name, address and license number on each side of the vehicle in letters not smaller than two (2) inches in height. [47 P.S. § 4-491(12)]. These provisions apply both to the transporter-for-hire licensee's vehicles and to the vehicle of another person duly authorized to transport liquor within this Commonwealth. [Id.].

This office has historically approved the use of magnetic signs that otherwise meet all requirements of the Liquor Code and Board's Regulations pertaining to vehicle identification. [47 P.S. §§ 4-491(12), 4-492(9)]. It is presumed for purposes of this response that the "cling" referenced in your question means this type of magnetic, removable signage.

In response to your fourth question regarding liability for service to minors, it is important to recall that there will be two (2) different licensees involved in your proposed business plan: the restaurant licensee that is making the sale of alcohol and the transporter-for-hire licensee that is making the delivery of the customer's purchase. Section 493(1) of the Liquor Code prohibits any licensee from selling, furnishing and/or giving any liquor or malt or brewed beverages to any minor or visibly intoxicated person. [47 P.S. § 4-493(1)]. Whether one (1) or both licensees will be held liable if alcohol is provided to minors will be decided on a case-by-case basis.

In response to your fifth question regarding the number of transactions that one (1) customer may make, a restaurant licensee is permitted to sell malt or brewed beverages for off-premises consumption in quantities of not more than one hundred ninety-two (192) fluid ounces in a single sale to one (1) person. [47 P.S. § 4-407]. The Liquor Code defines "sale" to include "any transfer of liquor, alcohol or malt or brewed beverages for a consideration." [47 P.S. § 102].

This office has historically advised licensees that in order for transactions to consist of two (2) separate sales, payment and delivery of the alcohol from the first transaction must occur before the second transaction begins. In a traditional sale wherein a patron is physically present on the restaurant licensed premises, it is clear that a patron must pay for the limited quantity of beer, take it off the licensed premises, and then return to make a subsequent purchase. [Id.].

In the current fact pattern wherein a patron completes a sale for off-premises consumption via credit card, typically via telephone or possibly electronically such as through an internet application, the restaurant licensee will still be required to make separate sales for any quantities in excess of one hundred ninety-two (192) fluid ounces. This may, as a practical matter, require two (2) or more telephone interactions between the restaurant licensee and the patron.

It is important to note that a licensed transporter-for-hire does not have any restriction on the quantity of alcohol it is permitted to deliver; therefore, the transporter is able to deliver multiple single sale orders to one (1) location, assuming compliance with all other laws and regulations concerning minors and visibly intoxicated persons as described above.

In response to your sixth question, licensees are free to make “house rules,” provided that such policies are not based on an unlawful discriminatory basis, such as race, sex or gender. Therefore, you may require a minimum purchase amount before offering delivery service.

In response to your seventh question concerning any other guidelines you should consider, there are several as follows. A transporter-for-hire is prohibited from transporting both malt or brewed beverages and a commodity that is hawked or peddled in the same vehicle at the same time. [40 Pa. Code § 9.92(b)]. This office has interpreted “hawked or peddled” to mean the attempt to sell a product from the delivery vehicle; a simple example is an ice cream truck that follows a route, enticing patrons to purchase treats directly from the truck. In your scenario, assuming that you do obtain a transporter-for-hire license, you may not at the same time use that vehicle as a “food truck,” as that term is currently used.

Also, if you obtain a transporter-for-hire license, you should also familiarize yourself with the following other provisions of the Board’s Regulations: section 9.13, dealing with records and reports for transporters-for-hire [40 Pa. Code §

9.13]; section 9.21, dealing with identification of cargo [40 Pa. Code § 9.21]; section 9.28, dealing with use of vehicles [40 Pa. Code § 9.28]; and section 9.92, dealing with transport vehicle restrictions [40 Pa. Code § 9.92]. Please be advised that the Board's Regulations are available through the Board's website, www.lcb.state.pa.us, by placing your cursor over the link for "Legal" located at the top of the main page, selecting the links for "Board Regulations" and then navigating the pages that follow to find the applicable sections.

Finally, please note that the Board will soon be issuing an advisory notice to address many of the issues relating to transporter-for-hire licenses. The advisory notice will be available on the Board's website.

Please do not hesitate to contact this office should you have additional 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

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