

February 23, 2015

Mark Koutavas
Boniko Corporation
820 Amity Street
Homestead, PA 15120-1551

RE: Questions Regarding Delivery of Pizza and Beer

Dear Mr. Koutavas:

ISSUE: This office is in receipt of your e-mail dated January 12, 2015 wherein you pose a hypothetical scenario and ask several follow-up questions concerning the rules for delivery of beer. According to your scenario, three (3) orders for delivery from your restaurant are to be delivered to the same neighborhood. Order number one (1) and order number two (2) are orders for food only, to be paid for with cash at the time the food is delivered to the customers. Order number three (3) is an order for food and beer, and has been paid for by credit card over the phone. All three (3) orders are being sent out for delivery with the same delivery person in the “company vehicle” that bears the required signage.

You first ask if you are permitted to use magnetic signage to satisfy the legal requirements for signage of vehicles transporting alcohol. You next inquire whether, under your scenario, the delivery driver can deliver order number three (3) (the food and beer order) first, and then remove the magnetic signage to deliver orders one (1) and two (2) (the food-only orders). If magnetic signage is not permitted, you ask if the delivery driver would be permitted to cover the signage when delivering orders one (1) and two (2). Finally, you ask whether, when using the vehicle exclusively for delivering food orders that do not contain alcohol, drivers are permitted to obscure the vehicle’s signage.

Pennsylvania Liquor Control Board (“Board”) records indicate that Boniko Corporation (“Boniko”) holds Restaurant Liquor License No. R-13464 (LID 67584) for use by it at premises located at 820 Amity Street, Homestead,

Pennsylvania. Board records further reflect that you are the Board-approved manager/steward for the 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. The Transporter-for-Hire Class A license, the license you hold, authorizes the holder to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth. A Transporter-for-Hire Class B license allows the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. A Transporter-for-Hire Class C license is a fleet license that authorizes the holder to engage in the commercial transportation of liquor parcels within the Commonwealth. [40 Pa. Code § 9.11].

You seem to be 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 on the licensed premises before the delivery 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.

To answer your first question, 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); 40 Pa. Code § 9.22]. Thus, you may use magnetic signs on the company vehicle.

Your scenario and questions that follow concerning multiple deliveries and removing, obscuring or covering the required signage on the vehicle seem to allude to the Board's regulation that prohibits a transporter-for-hire 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)].

While this section would prohibit the delivery of beer in a vehicle that is being used as a "food truck" (i.e. a vehicle which is used for off-premises sales of food initiated from the truck), it would be permissible to use a single vehicle to deliver beer and food items ordered from the licensed premises, even if payment of the food items does not occur until the item is delivered.

If you choose to 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.

Please keep in mind that section 493(1) of the Liquor Code makes it unlawful to sell, furnish, or give any alcoholic beverages to any person who is visibly intoxicated or a minor. [47 P.S. § 4-493(1)]. Section 493(1) also makes it unlawful to permit any alcoholic beverages to be sold, furnished, or given to any person who is visibly intoxicated or a minor. [47 P.S. § 4-493(1) (emphasis added)]. Finally, because of certain provisions of the Pennsylvania Crimes Code, drivers and deliverers of alcoholic beverages must be at least twenty-one (21) years of age.

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

cc: Pennsylvania State Police,
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LCB Advisory Opinion No. 15-060