

February 24, 2015

Jordan Gwinn  
Disobedient Spirits LLC

**RE: Off-Premises Sales by Limited Distillery**

Dear Mr. Gwinn:

ISSUE: This office is in receipt of your e-mail dated February 2, 2015, in which you ask various questions regarding the ability of a licensed limited distillery to make off-premises sales at an event taking place on March 8, 2015 at the Blair County Convention Center. Specifically, you note that Disobedient Spirits, a licensed limited distillery, has been invited to participate in the “Uncork the Alleghenies” event. You note your understanding of the rules concerning an off-premises tasting event; however, you ask if you are permitted to make sales of sealed bottles or take orders and payment for your products at this event, to be shipped from your licensed premises at a later date.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Disobedient Spirits LLC holds Limited Distillery License No. AL-16 (LID 68664) for use at the premises located at 30 South Main Street, Homer City, Pennsylvania. It is noted that the Blair County Convention Center holds Public Venue License No. PV-153 (LID 68399).

OPINION: As you likely know, section 505.4(b)(1) of the Liquor Code authorizes a licensed limited distillery to manufacture and sell on its licensed premises its distilled spirits to the Board, to other licensees of the Board, and to the general public. [47 P.S. § 5-505.4(b)(1)]. Furthermore, a licensed limited distillery may sell its bottled products at up to two (2) additional Board-approved locations, either alone or in conjunction with other licensed limited distilleries. [47 P.S. § 5-505.4(b)(2)(i)].

There is currently no provision in the Liquor Code or Board’s Regulations that would allow a licensed limited distillery to sell its products from any other location, even for a limited time. Please note that the taking of orders and acceptance of payment constitutes a “sale” of alcohol under the Liquor Code. [47 P.S. § 102]. There is, however, nothing that precludes a limited distillery licensee from simply taking orders

for its products off-site, for subsequent payment to be made at the licensed premises, with delivery of the alcohol to the customers following such payment.

In addition, it is permissible for a licensed limited distillery to conduct both samplings and tastings, either on its own licensed premises or elsewhere, in accordance with the following regulations.

### Sampling Promotion

A sampling promotion is intended to introduce consumers to a manufacturer's product and when conducted by a manufacturer, licensee or their representative, must adhere to the following criteria: (1) samples may be provided by manufacturers or their representatives, licensed distributors and importing distributors to unlicensed customers; (2) samples must be in unopened containers of the smallest commercially available size; (3) providing samples may not be conditioned upon any purchase requirement; (4) samples may not be opened or consumed on State Liquor Store premises or distributor or importing distributor licensed premises; and (5) samples are limited to one container per patron in any offering. [40 Pa. Code § 13.231 and Board Advisory Notice No. 10 (6<sup>th</sup> Revision)]

As indicated above, samples intended to be distributed off the licensed premises are to be in unopened containers of the smallest commercially available size. [40 Pa. Code § 13.231(b)]. However, samples distributed on the licensed premises must not exceed one and one half (1.5) fluid ounces per person. [47 P.S. § 5-505.4(b)(5)].

### Tasting Event

Tastings or tasting events are defined in the Board's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quality and availability. [40 Pa. Code § 13.201]. Tastings may be conducted by sponsors, which are defined as "any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is 21 years of age or older." [Id.].

Tastings may be conducted on licensed or unlicensed premises, provided the following conditions are met: (1) any products used must be legally procured and registered, and the taxes thereon must be paid; (2) there can be no purchase requirement associated with the tasting or tasting event; and (3) no more than one (1) standard size alcoholic beverage of each product may be provided to each tasting participant. [40 Pa. Code § 13.211(b)]. Please note that licensed limited distilleries

may charge a fee for tastings conducted on their own licensed premises, but not for off-premises tastings such as are proposed in your letter. [47 P.S. § 505.4].

Board Regulations provide that a standard-sized alcoholic beverage is twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), or one and one-half (1½) fluid ounces of spirits. [40 Pa. Code § 13.201; 47 P.S. § 505.4].

In sum, while you may not lawfully sell your products at the noted special event, you may conduct either a sampling or a tasting at the event in conformity with the above restrictions. Most notably, there cannot be any payment requirement, including an entry fee to the overall event (here, “Uncorking the Alleghenies”). Should you have any additional questions, do not hesitate to 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 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. 15- 065