

April 15, 2015

Michael Naessens  
President, Tangshan Corporation

**Re: Dispute Regarding Invoiced Amount**

Dear Mr. Naessens:

ISSUE: This is in response to your e-mail of March 3, 2015, wherein you advise that you received a delivery of malt or brewed beverages from Origlio Beverages (“Origlio”) on February 12, 2015, and an invoice for one thousand, three hundred thirty-nine dollars and ninety-nine cents (\$1,339.99). You advise that you issued a check for that amount on that date, and after Origlio’s driver left, discovered that the invoice was incorrect. You assert that the proper amount you should have been billed was six hundred forty-seven dollars and thirty-five cents (\$647.35). You advise that you contacted Origlio about the discrepancy and placed a stop payment on the check you had issued.

Subsequently, Origlio notified the Pennsylvania Liquor Control Board’s (“Board”) Bureau of Licensing (“Licensing”) that it did not receive sufficient payment from your business after a delivery. You note that you paid the corrected invoice as soon as it was issued by the distributor. You ask three (3) specific questions that will be re-stated below, followed by a response from this office.

Records of the Board indicate that Tangshan Corporation holds Restaurant Liquor License No. R-1456 (LID 61918) for the premises at 136 Chestnut Street, Philadelphia, Pennsylvania.

OPINION: Your questions are as follows:

1. When a stop payment is due to the mistake of a distributor, and the retailer immediately notifies the distributor, is the retailer eligible to have a corrected invoice presented immediately, and does the retailer have the right to only pay the

corrected invoice? In doing such, is a retailer not in violation of House Bill #242, Act 113 of 2011?

Nothing in the Liquor Code or the Board's Regulations addresses the rights or remedies a retailer may demand when an erroneous invoice is presented to a retailer by a distributor, and the retailer pays the invoice by check before the error is discovered.

On the other hand, the Liquor Code requires a distributor to report any situation where a check, draft or similar order for the payment of money is subsequently dishonored by the bank "for any reason whatsoever." [47 P.S. § 4-493(26)]. Even though the payment of the check was stopped because the amount was incorrect, the distributor was required to notify the Board when the check was refused, and the Liquor Code does not offer any exceptions to this rule.

After a distributor notifies the Board's Malt Beverage Compliance Officer ("MBCO"), of the dishonored check, the MBCO will provide the offending licensee written notice that the licensee has ten (10) days from the date the notice is mailed to honor the check it issued. Pursuant to section 445(b), unless the licensee honors the check within ten (10) days of the mailing date of the notice, the MBCO will turn the matter over to the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"), which enforces the provisions of the Liquor Code. [47 P.S. §§ 4-445(b), 4-493(26), 4-496].

Because you have paid the corrected invoice, the Bureau does not need to become involved. Please note that a copy of this letter will be placed in your file with Licensing, and will also be sent to the Bureau.

2. Since a retailer is able to pay for alcohol beverages at the Board's store with a credit card, can a retailer also pay for purchases of alcohol (beer) from a distributor with a credit card?

Section 493(2) of the Liquor Code [47 P.S. § 4-493(2)] authorizes distributors and importing distributors to accept credit cards for purchases of malt or brewed beverages *except* from other Board licensees. Note, however, that section 9.95 of the Board's Regulations provides the following:

Distributors and importing distributors may accept from purchasers debit card payments which provide for instant electronic transfer of funds from payor to payee. Debit card transactions which provide for instant electronic funds transfer shall be considered a cash equivalent which complies with the Liquor Code.

[40 Pa. Code § 9.95(c)].

3. Is a distributor in violation of the Liquor Code for wrongly issuing a notification under House Bill #242, Act 113 of 2011, to a retailer and the Board?

Please see the response to your first question.

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once 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 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. 15-166