

April 17, 2015

Ryan Stough

**RE: Home Delivery of Beer by Distributor**

Dear Mr. Stough:

ISSUE: This office is in receipt of your e-mail dated March 18, 2015 wherein you pose a series of questions concerning the procedures and requirements for your beer distributorship to begin residential delivery of beer to your customers. Your questions will be answered below, in the order presented within your e-mail.

Pennsylvania Liquor Control Board (“Board”) records indicate that Valley Green Beverage Inc. holds Distributor License No. D-360 (LID 69545) for the premises located at 20 Newberry Commons Drive, Etters, Pennsylvania. Board records further reflect that this licensee has a valid Sunday Sales Permit.

OPINION: As you seem to be aware, pursuant to section 431(b) of the Liquor Code, a distributor license authorizes the holder thereof to “sell or *deliver* malt or brewed beverages in quantities [not less than a case or original containers containing one hundred twenty-eight ounces or more] anywhere within the Commonwealth of Pennsylvania, which, . . . have been purchased only from persons licensed under this act as manufacturers or importing distributors.” [47 P.S. § 4-431 (emphasis added)]. Thus, the license currently held by your distributorship already allows for the delivery of malt or brewed beverages, and there is no need to obtain an additional permit.

**1. *What do I need on the vehicle that I will use to transport the beer to the consumer? (logo, business address and PALCB License Number?)***

Pursuant to section 492(9) of the Liquor Code, distributors are only permitted to deliver or transport malt or brewed beverages in “vehicles bearing the name and address and license number of such licensee painted or affixed on each side of such

vehicle in letters no smaller than two inches in height.” [47 P.S. § 4-492(9)]. 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]. Please note that pursuant to section 492(11) of the Liquor Code, it is unlawful for distributors to deliver or transport any malt or brewed beverages in a vehicle in which any other commodity is being transported without first obtaining board approval. [47 P.S. § 4-492(11)].

**2. *When can I deliver beer? I read in 2007, you couldn’t deliver on Sundays. But since the law changed can I deliver on Sundays now? (days and hours).***

The hours during which distributors may deliver malt or brewed beverages are set forth in section 492.1 of the Liquor Code. [47 P.S. § 4-492.1]. According to section 492.1(b), distributors may deliver malt or brewed beverages between two o'clock antemeridian (2:00 a.m.) of any Monday and twelve o'clock midnight (12:00 a.m.) of the following Saturday to retail licensees. [47 P.S. § 4-492.1(b)(1)]. Moreover, distributors may deliver malt or brewed beverages between eight o'clock antemeridian (8:00 a.m.) and eleven o'clock postmeridian (11:00 p.m.) of any day, except Sunday, to persons not licensed or permitted by the Board, i.e., non-licensees, usually individuals. [47 P.S. § 4-492.1(b)(2)].

Additionally, pursuant to section 492.1(d), licensed distributors that have obtained a Sunday Sales Permit from the Board may, after prior arrangement, deliver malt or brewed beverages to non-licensees or the holder of a special occasion permit (“SOP”) on Sundays between the hours of nine o'clock antemeridian (9:00 a.m.) and twelve o'clock noon (12:00 p.m.). [47 P.S. § 4-492.1(d)]. The term “prior arrangement” shall mean that malt or brewed beverages having a total sale price, excluding any deposits or credits, exceeding two hundred fifty dollars (\$250.00) have been ordered, invoiced and paid for in full at the seller's licensed premises before the Sunday of delivery. [47 P.S. § 4-492.1(f)]. Delivery to retail licensees on Sundays is not permitted. [See 47 P.S. §4-492.1].

**3. *What form of payment can I accept? Does the sale have to take place on the premises? Can I use a portable credit card scanner and receive payment at delivery? Cash acceptable?***

With regard to form of payment, section 493(2) of the Liquor Code prohibits sales or purchases of malt or brewed beverages by licensees with cash or on credit. [47 P.S. § 4-493(2)]. Therefore, an importing distributor (“ID”) or distributor (“D”) who is selling malt or brewed beverages to a **licensed** individual or entity may only accept checks, money orders, or debit cards. It would also be permissible for a licensee-buyer of malt or brewed beverages to prepay for the malt or brewed beverages in question, use a gift certificate, or to pay for the malt or brewed beverages through the electronic transfer of funds, so long as the transfer occurs prior to delivery of the malt or brewed beverages. Please note that section 493(2) does not apply to sales of items other than malt or brewed beverages.

It is permissible for distributors that are selling malt or brewed beverages to a **non-licensed** individual or entity to accept cash, checks, money orders, credit cards, gift certificates or debit cards as payment, so long as the payment is received on the licensed premises prior to delivery of the alcohol. [Id.].

Pursuant to section 441(c) of the Liquor Code, distributors are prohibited from maintaining or operating any place where sales are made other than that for which the license is granted. [47 P.S. § 4-441(c)]. In other words, a licensed distributor may only make sales of malt or brewed beverages on its licensed premises. [Id.]. A “sale” is defined as “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102]. Therefore, while your distributorship is permitted to transport and deliver malt or brewed beverages a residence, the sale must have been completed (i.e. payment received) at the distributor’s licensed premises prior to such delivery. It would not be permissible for the non-licensed customer to pay the delivery person for the malt or brewed beverages at the time of delivery, in any payment form whatsoever.

***4. Does the driver that delivers the beer have to be 21? To work at the distributor you don’t have to be, so I just want to make sure this isn’t different.***

It is unlawful for any distributor to employ minors under the age of eighteen (18) in any capacity. [47 P.S. § 4-493(27)]. Although the Liquor Code permits distributors to employ individuals aged eighteen (18) and older, be advised that section 6308 of the Crimes Code prohibits any minor (under the age of twenty-one (21)) from attempting to purchase, purchasing, consuming, possessing or knowingly and intentionally transporting any liquor or malt or brewed beverages. [18 Pa. C.S. § 6308 (emphasis added)].

Please keep in mind that, regardless of the location of the delivery of alcohol, 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)].

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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