

April 20, 2015

Shawn Piazza

RE: Compliance Questions

Dear Mr. Piazza:

ISSUE: This office is in receipt of your email of March 31, 2015, wherein you advise that you are a Pennsylvania Liquor Control Board (“Board”) licensee. You advise that your property owners association is looking into methods to cut costs and had compliance questions. Your email poses two (2) questions which will be addressed below.

Board records indicate that Treasure Lake Property Owners Association Inc. holds Restaurant Liquor License No. R-8443 (LID 59708); for use by it at premises located at 13 Treasure Lake, Dubois, Pennsylvania; Restaurant Liquor License No. R-20888 (LID 59709) for use by it at premises located at 3871 Bay Road, Dubois, Pennsylvania; and Privately Owned Public Golf Course Liquor License No. PGR-18 (LID 37283) for use by it at premises located at 13 Treasure Lake, Dubois, Pennsylvania.

OPINION: You ask two (2) questions which will be answered as follows:

- 1) Is it legal for you to consolidate liquor ordering to a single license and then transfer alcohol between the other licenses?

In Pennsylvania, the Board has the exclusive authority “to buy, import or have in its possession for sale and sell liquor [and] alcohol.” [47 P.S. § 2-207(a)]. The Board also has the exclusive authority “to control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor, alcohol and malt or brewed beverages.” [47 P.S. § 2-207(b)]. An extension of the Board’s authority is the issuance of licenses permitting qualified entities to transport liquor within the Commonwealth.

Generally, retail licensees in Pennsylvania may not be involved in the delivery of alcohol. A retail license does not authorize the holder to deliver alcohol. The Liquor Code authorizes such retail licensees to sell alcohol only on the licensed portions of the premises. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)-(4)]. Nevertheless, the Board will permit licensees, held by the same entity to store alcohol at a central licensed location for dispersal to the other licenses. Please be advised, that you would not be permitted to deliver alcohol to a licensee held by a different entity.

Malt or brewed beverages (“beer”) retail licensees are required to purchase beer from Board-licensed in-state manufacturers, distributors and importing distributors. Please be advised that you would not be permitted to transport the beer in your vehicle. Section 492 of the Liquor Code sets forth the requirements for transporting malt or brewed beverages by a licensee. Specifically, other than an adult individual who has made a lawful purchase for their personal consumption, only the original manufacturer, a licensed distributor or a licensed transporter-for-hire may transport beer within Pennsylvania¹. [47 P.S. § 4-492(8); 40 Pa. Code §§ 9.1, 9.28(a)]. Thus, since the beer is not for an individual’s personal consumption, it must be transported by the original manufacturer, a licensed distributor or a licensed transporter-for-hire.

Additionally, please be advised that distributors may not sell or deliver a manufacturer’s products to any person whose licensed premises is not located within the geographical area for which distributing rights have been given by the manufacturer. [47 P.S. § 4-431(b)]. A licensee, who accepts the delivery of malt or brewed beverages from a distributor that does not have distributing rights for that geographical area, shall be subject to a suspension of his license for at least thirty (30) days. [47 P.S. § 4-431(b)].

- 2) Is it permissible for you to receive a donation² of wine or spirits from a private donor or from another licensee that is going out of business?

Sections 491 and 492 of the Liquor Code make it unlawful for any person to possess any beer, wine or liquor within Pennsylvania that has not been purchased through a Pennsylvania Liquor Store, a licensed limited winery or from an entity licensed to sell malt or brewed beverages. [47 P.S. §§ 4-491(2), 4-492(3)].

¹ Since you would be transporting your own beer, even if your company was to acquire a transporter for hire license, the delivery prohibition would still stand.

² It is assumed your intention is to resell the alcohol at one of your retail licensees.

Section 13.51 of the Board's Regulations provides that no licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device for any purpose. [40 Pa. Code § 13.51]. Accordingly, a retail licensee would be prohibited from accepting donations of wine from manufacturer or distributor licensees. Thus, if your "private donor" is manufacturer or licensee of another class, you would not be permitted to accept the donation.

With regard to alcohol obtained from another licensee "going out of business", please be advised that the prohibitions in section 13.51 of the Board's Regulations [40 Pa. Code § 13.51] still apply. Moreover, it is doubtful that the "going out of business licensee" has the ability to sell wine or spirits for off premises consumption.

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
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