

July 17, 2015

Kyle Neuheimer
Neuheimer Brewing Co. LLC
DBA/Oakbrook Brewing Co.
P.O. Box 109
Fleetwood, PA 19522
VIA E-MAIL: kyle@oakbrookbrew.com

RE: Charitable Donation Questions

Dear Mr. Neuheimer:

ISSUE: This correspondence is in response to your e-mail sent June 22, 2015, wherein you ask two (2) questions relative to charitable donations.

You first ask whether it would be permissible for your brewery and brewpub to make charitable contributions to specific registered, non-profit organizations based on the sales of a designated beer product. As an example, you explain that you would like to donate one dollar (\$1.00) for every pint of a particular beer product sold in your brewery or brewery pub to the local library for its summer reading program. You further explain that the donation would not be part of a happy hour special or daily drink special, and the regular sale price of the beer would be the same as the other beers on draft. Rather, you would like to make this an ongoing charitable promotion whenever the particular beer is on tap at the brewery or brewery pub.

Alternatively, if the above scenario is prohibited, you ask whether it would be permissible for your brewery to make charitable contributions to specific registered, non-profit organizations based on the production of a particular beer product, as opposed to sales of the product. You explain that, under this scenario, your brewery would donate fifty dollars (\$50.00) for every barrel of a particular product that is brewed, instead of donating one dollar (\$1.00) for every pint sold.

The Pennsylvania Liquor Control Board's ("Board") records indicate that Neuheimer Brewing Co. LLC, t/a Oakbrook Brewing Company, has been issued Brewery License No. G-515 and Brewery Pub License No. GP-512 for use at the premises located at 628 Park Avenue, Reading, Pennsylvania. Both of those licenses are

currently being held in safekeeping with the Board. Thus, it is assumed that your questions pertain to potential activities that will occur once the licenses have been removed from safekeeping and when lawful production and sales of malt or brewed beverages may occur.

OPINION: As for your first question, please be advised that there is nothing in the Liquor Code or the Board's Regulations that precludes a licensee from donating a percentage of the proceeds it receives from the sale of a particular alcoholic beverage product or all alcoholic beverage products to a non-profit organization, so long as that organization does not have an unlawful pecuniary interest in the liquor license as a result thereof. The Liquor Code prohibits anyone other than the licensee from having a pecuniary interest in the licensed business. [47 P.S. § 4-404]. Section 1.1 of the Board's Regulations defines a pecuniary interest as follows:

Pecuniary interest – an interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest where a person receives ten percent (10%) or more of the proceeds of the licensed business or where control is exercised by:

- (a) Employing a majority of the employees of the licensee;
- (b) Independently making day-to-day decisions about the operation of the business; or
- (c) Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1]. Therefore, as long as an unlawful pecuniary interest is not granted to the non-profit organization as a result of the donation, a contribution based on sales of a particular beer product would be permissible.

Moreover, please be advised that while section 493(24)(i) of the Liquor Code [47 P.S. § 4-493(24)(i)] prohibits any manufacturer, or any employee or agent of a manufacturer, licensee or the Board, from offering or giving or soliciting or receiving anything of value as a premium or present to induce directly the purchase of alcohol, with limited exceptions not applicable here, it has traditionally been this office's position that an advertisement noting that a portion of sales will be donated to charity is not an unlawful inducement to purchase alcohol. Keep in mind, however, that any advertisements of alcoholic beverages must still comply with section 498 of the Liquor Code [47 P.S. § 4-498]. Section 498 may be accessed through the Board's website at www.lcb.state.pa.us by placing your cursor over the heading for "Legal,"

selecting the link for “PA Liquor Code,” then “Title 47 P.S. Liquor,” followed by “Chapter 1. Liquor Code,” then “Article IV Licenses and Regulations,” then “(d) Unlawful Acts; Penalties,” and ultimately “§ 498. Unlawful Advertising.”

Finally, with regard to the alternative question that you raised, please be advised that a contribution based on production of a particular beer product would also be permissible, as long as an unlawful pecuniary interest is not granted to the non-profit organization as a result of the donation, as discussed above.

Should you have any additional questions regarding this matter, the Liquor Code, or the Board’s Regulations, please do not hesitate to 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. 15-300