

July 17, 2015

Greg Horwath

VIA E-MAIL: [greg@horwathmail.com](mailto:greg@horwathmail.com)

**RE: Commingling of Business Operations**

Dear Mr. Horvath:

ISSUE: This is in response to your e-mail of June 18, 2015 in which you state that you are an insurance agent for a licensed Pennsylvania beer distributor. The “owner” of the beer distributor also owns several other businesses, including a wholesale tobacco company. You state that the wholesale tobacco company is located at a different physical location than that of the licensed beer distributor. One (1) employee of the licensed beer distributor works for the tobacco company.

Recently the Pennsylvania Compensation Rating Bureau (“PCRB”) conducted an audit of the wholesale tobacco business and determined that the “owner” must combine workers compensation insurance policies of the beer and tobacco businesses into one (1) policy. You included a letter from the PCRB that noted findings that the one (1) employee who works for the tobacco business orders the tobacco products that are then sold by the related entity, the beer distributor. The tobacco products are either shipped directly from the manufacturers to end-user customers or are sold from the beer distributor’s licensed premises.

Neither your e-mail nor the PCRB letter states where this employee conducts the ordering of tobacco products, nor did it note any addresses at all. Internet research regarding corporate registrations indicates that both entities share a United States Postal Service post office box, but have separate registered physical addresses adjacent to each other.

You ask whether combining the workers compensation insurance policies of the tobacco business and the beer business would constitute an unlawful commingling of funds that might jeopardize the liquor license.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Link Beverages, Inc. holds Malt Beverage Distributor License No. D-2054 (LID 4588) for use at the premises located at 315 Thomas Street, Box 66, Coopersburg, Pennsylvania. Grantville Arden (“Skip”) Link is the President.

OPINION: Section 492(12) of the Liquor Code prohibits a distributor, or his servants, agents or employees from engaging in any other business whatsoever, whether on or off the licensed premises, without Board approval. [47 P.S. § 4-492(12); *see also*, 40 Pa. Code § 5.22(b)]. There is no record of such approval having been sought. Thus, not only would the joinder of the two (2) businesses on one (1) insurance policy imply an impermissible commingling of operations, the current practice of having one (1) employee of the licensed distributor simultaneously acting as an employee of the tobacco business is also problematic. Please also note that Mr. Link, having a material interest in a distributor license, must obtain approval of all his other business interests, whether or not they are conducted at the licensed premises.

Although it is strongly recommended that the licensee seek private legal counsel experienced in Pennsylvania liquor law to provide advice and guidance regarding the various commercial enterprises, one (1) solution may be to have the licensed distributor entity undertake the purchase and resale of tobacco products. By way of background, throughout the years, the Board has received numerous requests from distributors and importing distributors to engage in the sale or rental of additional items.

The Board’s Advisory Notice No. 9 (5th Revision), dated April 25, 2012, lists the items which the Board has considered and either granted or denied approval for distributors and importing distributors to sell or rent, as well as specifies to whom the items may be sold or rented (i.e., the general public and/or other licensees of the Board). This Advisory Notice specifically allows a licensed beer distributor to sell tobacco products to the general public and to other licensees without need for additional Board approval, although these products may not be sold in wholesale lots for resale.

In the meantime, if approval for dual employment with an unlicensed establishment is needed by any distributor, or its servants, agents or employees, the licensee should complete PLCB-2384 “Dual Employment Affidavit” and return it to the Board’s Bureau of Licensing for presentation to the Board. The form can be found on the Board’s website at <http://www.lcb.state.pa.us>, then select

“Licensees,” then “Applications and Forms,” then “Forms,” and then select the noted document. The return address is on the form.

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

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