

July 23, 2015

Dean Browne
Rowhouse Spirits
VIA E-MAIL: pastor.o.fermentation@gmail.com

RE: Use of Sales Agents by Limited Distillery

Dear Mr. Browne:

ISSUE: This office is in receipt of your e-mail dated June 25, 2015, wherein you advise that you would like to use employees of a Pennsylvania importer to sell your distilled spirits to licensed bars and restaurants located in Pennsylvania. You indicate that the employees would promote your products and notify you of purchase orders, but you would send the invoices and collect payments from the purchasers on behalf of the distillery. You also ask if your distillery could use the same importer to then deliver the purchased products to the bars and restaurants. You advise that the importer is licensed to deliver wine and spirits within Pennsylvania.

Pennsylvania Liquor Control Board (“Board”) records indicate that Rowhouse Spirits LLC (“Rowhouse”) holds Limited Distillery License No. AL-19 (LID 69033) for use by it at premises located at 2440 Frankford Avenue, Philadelphia, Pennsylvania. Board records further reflect that you are the sole member and Board-approved manager of Rowhouse.

OPINION: As you are aware, the Liquor Code authorizes the Board to issue a limited distillery license, allowing “the holder thereof to operate a distillery that shall not exceed production of one hundred thousand (100,000) gallons of distilled liquor per year. The holder of the license may manufacture and sell bottled liquors produced on the licensed premises to the board, to entities licensed by the board and to the public.” [47 P.S. § 5-505.4(b)(1)].

Please note that sales of your distilled spirits may only occur on the licensed premises or at a Board-approved additional location. The Liquor Code defines “sale” as “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102]. Therefore, if a retail licensee places an order for product that you receive

on the licensed premises, and you receive payment with the order, that is considered a sale, even though the buyer does not yet have receipt of the purchased product.

The Board's Regulations provide that a limited distillery licensee may have product delivered to a buyer either through properly licensed vehicles or through the use of a licensed transporter-for-hire. [40 Pa. Code § 11.222]. Therefore, as a holder of a limited distillery license, you may lawfully ship your product to your customers in Pennsylvania, including licensed bars and restaurants, either in your own vehicles or via a licensed transporter-for-hire. Please note that in either scenario you must ensure that the product is sold and delivered only to persons aged twenty-one (21) or older, and to persons who are not visibly intoxicated. [47 P.S. § 4-493(1)].

A licensed importer is not permitted to sell directly to licensees, such as restaurants or hotels; sales must be made through the Board. [47 P.S. § 4-410(e)]. Only limited wineries, limited distilleries and distilleries of historical significance are afforded the statutory ability to operate as a direct retailer of wine and liquor to consumers. [47 P.S. § 5-505.2 and 47 P.S. § 5-505.3]. Therefore, the importer that you utilize to promote your products would not be permitted to sell products directly to licensees.

As a manufacturer, you may educate other licensees such as bars and restaurants about your products by way of tastings or samplings and you may hire employees or agents to do this for you. Likewise, the holder of an importer license is considered a licensed vendor and may also employ agents to promote sales in Pennsylvania. [40 Pa. Code §13.71]. "Agent" is defined as an individual employed by a licensed vendor to promote the sale of liquor through state liquor stores. [Id.]. Agents enjoy the following privileges as set forth in section 13.73 of the Board's Regulations:

- (a) Agents may advertise and promote the sale of stock merchandise by "missionary work" of only those brands sold to the Board by the vendor by whom the agents are employed.
- (b) Agents may solicit orders from retail purchasers for stock merchandise or gift certificates for the merchandise.
- (c) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. Special orders obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

(d) Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the Board as luxury items. Orders for luxury items obtained by vendors' agents shall be filed with one of the State Liquor Stores as required in this subchapter.

[40 Pa. Code § 13.73].

Therefore you may utilize employees of a licensed importer to promote your product so long as the sales of the product occur on your licensed premises. However, please note that the importer cannot distribute products belonging to another entity and charge a fee for doing so, unless the importer also has a transporter-for-hire license.

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, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 15-309