

July 23, 2015

Mark J. Dudash, Esquire
Duquesne Beer
120 Bradley Court
Pittsburgh, Pa 15229
VIA E-MAIL: mariadudash@duquesnebeer.com

RE: Wholesaler Pre-orders

Dear Mr. Dudash:

ISSUE: This office is in receipt of your e-mail of June 30, 2015, wherein you advise that you are a Pennsylvania Liquor Control Board (“Board”) licensee. You ask whether a wholesaler or retailer can accept “pre-orders” from customers who wish to prepay for an order with a credit card. You indicate that you have had inquiries from customers both within and outside the Commonwealth of Pennsylvania regarding a new brand you are establishing. You advise that customers would pick up the products at the retailers’ locations.

Board records indicate that Duquesne Brewing Company holds Alternate Malt Beverage Manufacturing License No. AG-28 (LID 63452) for use by it at premises located at 100 33rd Street, Latrobe, Pennsylvania.

OPINION: Please be advised that 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, any importing distributors or distributors who are selling malt or brewed beverages to a licensed individual or entity may accept only checks or debit cards. Importing distributors and distributors may not accept cash or credit cards from a licensee. [Id.].

However, it would be permissible for a licensee buyer of malt or brewed beverages to prepay for the malt or brewed beverages in question, or to pay through the electronic transfer of funds, so long as said transfer occurs prior to delivery. Although an escrow account is not required, neither the Liquor Code nor the Board’s Regulations prohibit distributors, importing distributors and breweries from holding an escrow account for a licensed customer, whereby the licensed

customer would pay in advance to the distributor, importing distributor or brewery a sum of money from which the amount of each subsequent sale would be debited immediately.

There is no provision of the Liquor Code or Board's Regulations that would prohibit individual, non-licensee consumers from prepaying for beer with a credit card.

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. 15-315