

July 24, 2015

Horace Howells
Vice President of Marketing
W&L Sales Company
4050 Industrial Rd.
Harrisburg, PA 17110
VIA E-MAIL: hhowells@wlsales.com

RE: Paying for Cooperative Advertising

Dear Mr. Howells:

ISSUE: This correspondence is in response to your e-mail sent June 8, 2015, wherein you ask whether it would be permissible for one (1) of the parties engaged in cooperative advertising to pay one hundred percent (100%) of the cost of the advertising and then seek reimbursement from the other party for its proportionate share in circumstances where split billing is not available.

The Pennsylvania Liquor Control Board's ("Board") records indicate that W & L Sales Co. Inc. holds Importing Distributor License No. ID-264 (LID 8508) for use at the premises located at 4050 North Industrial Road, Harrisburg, Pennsylvania.

OPINION: As you already appear to be aware, the Liquor Code's provisions on interlocking business practices generally prohibit licensees of one (1) class, such as importing distributors or distributors, from providing money or other things of value to equip or otherwise help the operation of a licensee of a different class, such as retail licensees. [47 P.S. §§ 4-411, 4-443]. Similarly, section 13.51 of the Board's Regulations prohibits a licensee of one (1) class from providing anything of value, including advertising, to a licensee of another class. [40 Pa. Code § 13.51]. Historically, however, the Office of Chief Counsel has opined that cooperative advertising between licensees of different classes would not violate these provisions, so long as each party pays its proportionate share for the cost of the advertisement. This is because if each party pays for its proportionate share for the cost of the advertisement, then neither party can be said to be providing or giving something of value to the other party.

As a practical matter, this office recognizes that, at least in some instances, split billing may not be available and that cooperative advertising between licensees would not be feasible without the licensees being able to seek reimbursement from each other to effectuate payment for their proportionate shares of the cost of the advertisement. With that being said, it is the opinion of this office that, in instances when split billing is not available, the payment and reimbursement scenario that you described would not violate the Liquor Code or the Board's Regulations and, thus, would be permissible, as long as no additional benefits are exchanged between the parties. These additional benefits would include things such as extending the payment period for the other licensee to pay its proportionate share of the cost of the advertisement beyond the normal billing cycle or accepting incremental payments from the other licensee in lieu of payment of the full amount of its proportionate share of the cost of the advertisement.

Additionally, please keep in mind that any licensees who are party to a cooperative advertising arrangement would be expected to keep accurate business records that detail the terms of such arrangement in order to establish compliance with the Liquor Code and the Board's Regulations. At a minimum, such records should reflect what portion of the advertisement is attributable to each party, how much each party paid for the advertisement, to whom each party made payment, and when payment was made by each party.

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

LCB Advisory Opinion No. 15-319