

August 14, 2015

Lisa Hanisch

Re: License Requirement

Dear Ms. Hanisch:

ISSUE: This office is in receipt of your e-mail dated July 13, 2015, wherein you indicate that you currently work for Beam Suntory, a supplier of spirits. You note that your company sells alcohol to wholesalers who, in turn, sell the products at retail. You provide the following details regarding your sales representatives, specifically they: (1) do not write or take orders; (2) do not sell direct to retailers; (3) do make sales calls to speak with bar managers and retail buyers about new products; (4) may assist with displays in Pennsylvania wine and spirits stores; and (5) may provide sampling when legal in the state.

You ask whether, based upon the information above, it is necessary for sales representatives of Beam Suntory to obtain a permit in Pennsylvania.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Jim Beam Brands Co, located at 510 Lake Cook Road, Suite 200, Deerfield, Illinois, holds Vendor Permit VP-750 (LID 61514).

OPINION: A permit or license would not be required in order for Beam Suntory sales representatives to perform the tasks that you have outlined above. However, because Jim Beam holds a vendor permit, its agents/sales representatives would be permitted to perform the duties of an agent under the Board’s Regulations. Therefore, it may be helpful to review some information regarding vendor permits and the permissible duties that may be performed by vendor agents.

A vendor's permit is issued to non-resident vendors (i.e., those entities wishing to sell to the Board, but that do not possess an importer's or manufacturer's license issued by the Board) and allows the holder to sell to the Board, and to solicit and promote products to licensed retail establishments 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. [40 Pa. Code § 13.71]. An agent cannot

be a licensee or an officer, director, agent or employee of a licensee. The agent must be at least twenty-one (21) years of age, a citizen of the United States and of good character. [40 Pa. Code § 13.71]. Pennsylvania residency is not required.

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. [40 Pa. Code § 13.73]. "Missionary work" is the promotion of products through any legitimate means.

Agents may also solicit from licensees orders for those brands of liquor which have been listed with the Special Liquor Purchase Division of the Board. [40 Pa. Code § 13.73]. Special liquor orders obtained by the licensed vendors or their agents shall be filed with one (1) of the state liquor stores or the Bureau of Product Management. [40 Pa. Code § 13.73]. All special liquor order purchases must first be consigned to the Board’s wine and spirits stores before being released for delivery to the consumer. Special liquor orders placed by a licensed vendor or the vendor’s agent for a retail customer may be released by the state liquor store for delivery to the consumer. [40 Pa. Code § 13.79(d)]. A vendor’s permit would permit this service. Furthermore, a fee may be charged for these services.

Regarding tastings, please be advised that a “tasting” or “tasting event” is defined within the Board’s Regulations as “[a] presentation of alcoholic products to the public for the purpose of market research, disseminating product information and education of the public as to quality and availability.” [40 Pa. Code § 13.201]. Tastings may be conducted by sponsors on licensed or unlicensed premises. [40 Pa. Code § 13.211(a)]. A sponsor may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one (21) years of age or older. [40 Pa. Code § 13.201].

Sponsors conducting a tasting or tasting event must adhere to the following requirements. Any products used must be properly procured and registered, and taxes on the products must be paid. [40 Pa. Code § 13.211(b)(1)]. There can be no purchase requirement associated with such tasting. [40 Pa. Code § 13.211(b)(2)]. Finally, no more than one (1) standard-sized alcoholic beverage of each product shall be provided to each tasting participant. [40 Pa. Code § 13.211(b)(3)]. A “standard-sized” alcoholic beverage is twelve (12) ounces of a malt or brewed beverage, four (4) ounces of wine (including fortified wine) or one and a half (1 ½) ounces of spirits. [40 Pa. Code § 13.201].

As mentioned above, there can be no purchase requirement for a sponsor-conducted tasting event. This means that the alcohol being provided as part of the tasting must truly be free and cannot be predicated upon the purchase of an admission ticket, a donation or payment of any other fee. In other words, anyone who attends a sponsor-led tasting must be able to request and receive a tasting, provided that the individual is twenty-one (21) years of age or older and not visibly intoxicated.

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. 15-343