

August 14, 2015

Jesse Rotz  
President  
Ryo-Pitz Brewing Co., LLC  
**RE: Staffing for Second Location**

Dear Mr. Rotz:

ISSUE: This office is in receipt your e-mail dated July 3, 2015, wherein you indicate that your brewery is considering the possibility of opening a second location. You ask if there is anything the Pennsylvania Liquor Control Board's ("Board") Regulations that would prevent you from subcontracting to another party the staffing and management of this second location.

Board records indicate that Roy Pitz Brewing Co Inc. holds Brewery License G-399 (LID 59308) and Brewery Pub License GP-399 (LID 67258) for premises located at 140 North 3<sup>rd</sup> Street, Chambersburg, Pennsylvania.

OPINION: Nothing in the Liquor Code prohibits an individual entity from holding more than one (1) brewery license, assuming that entity is otherwise qualified to hold a license. Therefore, the holder of a brewery license may form a separate company to hold a second brewery license, or may acquire a second license under the same company. Your e-mail does not provide any specific details regarding how the staffing and management would be "subcontracted." However, please be advised that the Liquor Code prohibits any entity other than the licensee from having a pecuniary interest in the licensed business. [47 P.S. § 4-404]. Section 1.1 of the Board's Regulations defines "pecuniary interest" as "an interest that sounds in the attributes of proprietorship." [40 Pa. Code § 1.1]. Such an interest is one (1) of substantial control of a licensed premises, evidenced by participation in the profits, assumption of liability, decision-making authority and purchasing, employment and other elements of ownership. [Appeal of E-J Westside Inn, Corp., 449 A.2d 93 (Pa. Cmwlth. 1982)]. The licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager must be an agent of the licensee. [40 Pa. Code § 5.23(j)].

There is a rebuttable presumption of a pecuniary interest when a person receives ten percent (10%) or more of the proceeds of the licensed business or when control is exercised by one (1) or more of the following:

- i. Employing a majority of the employees of the licensee.
- ii. Independently making day-to-day decisions about the operation of the business.
- iii. Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1].

Please note, that it may be possible for the secondary location to be managed by a management company. Section 102 of the Liquor Code [47 P.S. § 1-102] defines “management company” as “any entity employed or otherwise contracted by a licensee to operate, manage or supervise all or part of the operation of the licensed premises.” Section 3.1 of the Board’s Regulations [40 Pa. Code § 3.1] defines “management contract” as an “agreement between a licensee and a management company to operate, manage or supervise all or part of the operation of the licensed premises.”

Please note, however, that a management contract would still not allow the management company to have a pecuniary interest in the license. Section 3.141 of the Board’s Regulations provides the following information regarding management contracts:

- a) A licensee may contract with another person to manage its licensed premises.
- b) A management contract must reserve to the licensee the capability to direct its own business.
- c) A management contract must be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.
- d) A management contract may not give a pecuniary interest to a management company.

[40 Pa. Code § 3.141].

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Should you have any further questions or concerns regarding this matter, please do not hesitate to 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. 15-344