

August 24, 2015

Charles Imbro

VIA E-MAIL: Charles.imbro@yahoo.com

RE: Interlocking Interests and Couplets

Dear Mr. Imbro:

ISSUE: This office is in receipt of your e-mail dated August 4, 2015, wherein you indicate that you currently hold a restaurant liquor license (“R”) and are interested in opening a brewery and/or a distillery. You ask if you may do so in your current building or, if you wish, may you open a brewery and/or distillery at a different location. You ask for an explanation of the difference between distributing the products (presumably beer and/or spirits) and selling same in-house to your customers. Finally you ask generally how federal law applies.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that 343 Pine LLC holds Restaurant Liquor License No. R-14756 (LID 63755) for use at the premises located at 343 Pine Street, Williamsport, Pennsylvania. You are the Board-approved manager. You are also president of H.I.P. Development LLC, which is the lessor of the property. You are also the president of Coppa Grill LLC, holder of Restaurant Liquor License No. R-16706 (LID 59157), which is located at 135 North 3rd Street, Williamsport, Pennsylvania. It is not clear which of these properties you are referencing in your e-mail.

OPINION: Sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license, such as restaurant or hotel, and a manufacturing license, such as a brewery or distillery. [47 P.S. §§ 4-411, 4-443]. This is known as the “interlocking business prohibition.” Section 438(c) of the Liquor Code also prohibits a person from possessing more than one class of license. [47 P.S. § 4-438(c)]. However, sections 411 and 438 provide an exception which states:

...an entity may acquire both a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for

use at the same location and more than one location may be so licensed.

[47 P.S. §§ 4-411, 4-438(c)].

Your plan for a brewery and/or distillery may be permissible so long as the corporate entity holding the restaurant (“R”) liquor license and the brewery (“G”) or distillery (“A”) license are the same and so long as the location of each is the same. This configuration is known as a “couplet.” Please note that section 446(a)(4) of the Liquor Code requires that the brewery produce at least two hundred fifty (250) barrels of malt or brewed beverage per year in order to also hold an R license in connection with the brewery. [47 P.S. § 4-446(a)(4)].

In response to your first question, it would be permissible for you to obtain a manufacturing license in one (1) of your current R license locations and to operate that manufacturing enterprise as a couplet. However, the interlocking business prohibition would not permit you to have a brewery and/or distillery if the manufacturing license(s) were at a different location than an R license. [47 P.S. §§ 4-411, 4-443].

Regarding distribution, a G licensee may sell to individuals for off-premises consumption, in containers or packages of unlimited quantity and of any volume, beer manufactured on its licensed premises. [47 P.S. § 4-440]. An R licensee may sell up to one hundred ninety-two (192) ounces of beer in a single sale to an individual for off-premises consumption.

When the two (2) licenses are located on the same property as in a couplet situation, unlimited sales of the G licensee’s beer for off-premises consumption may occur on the G-licensed portion of the property, but sales for off-premises consumption are restricted to one hundred ninety-two (192) ounces in a single sale on the R-licensed portion of the property.

Regarding distribution by a licensed distillery or licensed limited distillery, please note that section 505.4(b)(1) of the Liquor Code authorizes the manufacture and sale of distilled spirits on licensed premises to the Board, to other licensees of the Board, and to the general public. [47 P.S. § 5-505.4(b)(1)]. Furthermore, a licensed limited distillery may sell its bottled products at up to two (2) additional Board-approved locations, either alone or in conjunction with other licensed limited distilleries. [47 P.S. § 5-505.4(b)(2)(i)].

There is currently no provision in the Liquor Code or Board's Regulations that would allow a licensed limited distillery to sell its products from any other location, even for a limited time. Please note that the taking of orders and acceptance of payment constitutes a "sale" of alcohol under the Liquor Code. [47 P.S. § 102]. There is, however, nothing that precludes a limited distillery licensee from simply taking orders for its products off-site, for subsequent payment to be made at the licensed premises, with delivery of the alcohol to the customers following such payment.

On the issue of having two different manufacturing licenses in any one location, please note that the Board's Bureau of Licensing ("Licensing") will not typically dual-license a location, absent specific statutory authority. Thus, only one (1) manufacturing license may be in effect at one (1) time at any particular portion or location.

The Board has entered into a Conditional Licensing Agreement ("CLA") with a licensee that wishes to place two (2) manufacturing licenses at the same location. However, such an arrangement would require the consent of both Licensing and the Board, and a decision on whether such an arrangement is acceptable is not a decision made by this office. Thus, this office cannot provide any further guidance other than suggesting that if you wish to pursue this matter, you should submit an application to Licensing.

In response to your second question, when a retail licensee obtains a manufacturing license for the same location, thereby having a "couplet" at that location, the manufacturer may no longer self-distribute. Rather, as a holder of an R license and a G license, the malt or brewed beverages produced at the brewery would need to follow the three (3)-tier distribution system used by outside breweries:

[I]f any malt or brewed beverage is to be distributed in this Commonwealth it shall be only through specific importing distributors who shall have first been given distributing rights for such products in designated geographical areas through the distribution system required for out-of-State manufacturers under section 431(b) as well as all other pertinent sections of this act.

[Id.]. However, the G license holder may provide those malt or brewed beverages that it manufactures to its own R licensee, since no sale is involved.

In response to your third question, this office is not able to provide guidance on federal laws. You may wish to contact the United States Alcohol and Tobacco Tax and Trade Bureau at the following web address: <http://www.ttb.treas.gov>. It is also recommended that you obtain private counsel experienced in liquor law to assist you with your complex commercial undertakings.

If you have any further questions about the Liquor Code or Board's Regulations, please contact this office again.

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- 364