

October 19, 2015

Amy Christie
Executive Director
Pennsylvania Tavern Association
204 State Street, Third Floor
Harrisburg, PA 17101

RE: Beer-to-go

Dear Ms. Christie:

ISSUE: This Office is in receipt of your letter dated September 14, 2015, wherein you requested an update or modification to our Office's June 14, 2012 response to you regarding the sale of malt or brewed beverages ("beer") for off-premises consumption. In your May 11, 2012 e-mail, you posed a question regarding a customer who brings to the counter a quantity of beer in excess of one hundred ninety-two (192) ounces, and the customer initially pays for only one hundred ninety-two (192) ounces of beer and leaves the remaining amount on the counter. The customer then exits the establishment with this initial cache of beer and carries it to his/her vehicle. The customer then reenters the establishment and pays for the remaining beer. You inquired if a retail licensee could be cited by the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") as it was the intention of the customer to purchase a quantity of beer in excess of one hundred and ninety-two (192) ounces.

In this Office's June 14, 2012 response to you, we advised you that it would be permissible for a licensee to sell to a patron up to one hundred ninety-two (192) fluid ounces for off-premises consumption and then to make a subsequent sale of up to one hundred ninety-two fluid (192) ounces for off-premises consumption within a relatively short period of time for this same patron, provided that these transactions constitute two (2) separate sales.

By letter dated September 14, 2015, you requested this Office modify its June 14, 2012 response, so as to no longer require customers to exit an establishment after each sale of beer.

OPINION: Please be advised that the Board, as an administrative agency, does not have the authority to modify or ignore existing laws. Therefore, this Office still believes its June 14, 2012 response to you is a correct interpretation of section 407 of the Liquor Code [47 P.S. § 4-407]. Consequently, this Office's opinion on this issue has not changed.

As you are aware, section 407 of the Liquor Code allows retail licensees, other than clubs, to sell beer for off-premises consumption in quantities of not more than one hundred ninety-two (192) fluid ounces in a single sale to one (1) person. [47 P.S. § 4-407]. It is permissible for a licensee to sell to a patron up to one hundred ninety-two (192) fluid ounces for off-premises consumption and then to make a subsequent sale of up to one hundred ninety-two fluid (192) ounces for off-premises consumption within a relatively short period of time for this same patron, so long as these transactions constitute two (2) separate sales.

“Sale” is defined in section 102 of the Liquor Code as including “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102]. In order for transactions to consist of two (2) separate sales, payment and delivery of the alcohol from the first transaction must occur before the second transaction begins. Therefore, the first beer purchase must be removed from the premises before the second purchase is begun. Thus, the first transaction for the original purchase of one hundred ninety-two (192) ounces of beer is complete upon the customer paying for the beer, removing it from the establishment, and placing the beer in his/her vehicle. The purchase of the remaining beer in excess of one hundred ninety-two (192) ounces would be permissible because it constitutes a separate sale.

Please be further advised that should you wish to see a change to the sale of beer by retail licensees for off-premises consumption, you may wish to seek a legislative change.

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

Amy Christie
Page 4
October 19, 2015

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 No. 15-441