

July 1, 2016

Charles H. Rieck, IV, Esquire
Blakinger Thomas
28 Penn Square
Lancaster, Pa 17603
VIA E-MAIL

RE: Brewery Questions

Dear Mr. Rieck:

ISSUE: This office is in receipt of your e-mail of April 25, 2016, wherein you advise you represent an unnamed corporation which holds several brewery (“G”) licenses issued by the Pennsylvania Liquor Control Board (“PLCB”). You further advise that each of your client’s G licenses has an adjacent brewery pub (“GP”). You state that malt or brewed beverages (“beer”) is commonly transferred from the G licensee to the respective GP¹. You pose a myriad of questions which will be addressed below.

OPINION:

Your questions and the responses thereto are as follows:

- 1) What exact volume of beer must be produced by the G to satisfy the “some quantity” requirement in order to continue to operate the GP?

A GP license allows the holder of a G license to operate a restaurant or brew pub within or immediately adjacent to the G’s premises. 47 P.S. § 4-446. It allows sales for on-premises consumption of the beer produced and owned by the G, and sales for off-premises consumption of its products. Section 446(a)(4) of the Liquor Code requires that the G produce at least two hundred fifty barrels of malt or brewed

¹ In your e-mail, you advise that PLCB Advisory Opinion 15-048 stands for the proposition that G and GPs under “common control” may transfer beer amongst themselves. The Advisory Opinion you mention, however, may not be as broad as you interpret it. A.O. 15-048 dealt with a request to operate a GP at an off-site location from its corresponding G. The licensee was advised that its proposal was not permissible.

beverage per year in order to also hold a retail license in connection with the G. 47 P.S. § 4-446(a)(4). Further, section 492(1) of the Liquor Code allows a person to brew up to 200 gallons a year before needing a license. 47 P.S. § 4-492(1). Therefore, the PLCB's Bureau of Licensing ("Licensing") would expect a "G" licensee to produce at least two hundred gallons a year in order to hold a "GP" and two hundred fifty barrels a year if it acquires a retail license.

- 2) Must the beer be produced in its entirety at each brewery, or may the GP receive non-fermented malt extract liquid from a G and then finish the product in order to satisfy the production requirement?

No, the malt extract liquid is not sufficient. Sales of alcoholic beverages at the brewery pub premises are limited to sales of malt or brewed beverages produced at and owned by the G adjacent to it or a G which is under common control with the GP. 40 Pa. Code § 3.92. "**Malt or Brewed Beverages**" is defined in section 102 of the Liquor Code, 47 P.S. § 1-102 as, "...any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider." Malt extract liquid is not in the definition of "malt or brewed beverages." Further, a GP license does not authorize the manufacturing of malt or brewed beverages.

- 3) Would the production of non-fermented malt extract liquor satisfy the "some quantity" requirement of the transferor brewery?

See answer #2.

- 4) May a G fulfill the "some quantity" requirement by solely testing the production of various types of beer even if the beer will not be offered for sale at the adjacent GP?

It is unclear what your question is here. As mentioned above, a GP may only sell beer produced by its G. A G licensee is free to produce beer it does not wish to sell at its GP for on-premises consumption at that location, as long as it meets the requirements set forth in the PLCB's regulations for on-premises consumption at a brewery.

- 5) Is there any requirement that a GP offer for sale beer produced at G so long as the adjacent G is producing "some quantity of malt or brewed beverages?"

See answer #4. In addition please be advised that a GP can only sell beer made by a G held by the same legal entity.

- 6) Is there any prohibition against one of the remote commonly controlled Gs maintaining all centralized records of all G and GP operations and sales?

Yes. A licensee is required to maintain, on its licensed premises, business records for the most recent six months, and may only remove those records from the licensed premises for “a lawful business purpose,” and must return those records after such business has been concluded. 47 P.S. § 4-493(12). A licensee may maintain records off the licensed premises that are between six months and two years old, provided that such records are returned to the licensed premises within twenty-four hours of a request by the PLCB or the Pennsylvania State Police, Bureau of Liquor Control Enforcement. Id.

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

Sincerely,



RODRIGO J. DIAZ
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