

July 12, 2016

Michael B.L. Hepps, Esquire
VIA E-MAIL

RE: Expansion of Permitted Products and Services

Dear Mr. Hepps:

ISSUE: Your e-mail of May 29, 2016 states that your client, Elemar, Inc., has informed you that convenience stores are now permitted to sell beer, even when they have gas stations associated with the enterprise. Your client has also informed you that the Pennsylvania Liquor Control Board (“PLCB”) has promulgated a list of products which distributors are allowed to sell, some of which may be viewed as convenience store-type products. You state that you have suggested to your client that in view of the above, you see no impediment to your client expanding its product line to include all convenience store items. You seek confirmation that this is accurate.

In addition, you request assurance that your client would be permitted to build a gas station in its parking lot.

Records of the PLCB indicate that Elemar, Inc. holds Distributor License No. D-3562 (LID 5109) for use by it at premises located at 111 Butler Avenue, Lancaster, Pennsylvania.

OPINION: It is not accurate that convenience stores are now permitted to sell beer. Rather, as has been widely reported in the news, the PLCB has in the past approved the transfer of various licenses to qualified restaurants, eating place retail dispensers, and distributors which have interior connections to other businesses, including convenience stores. In each individual case, it is the restaurant, eating place retail dispenser, or distributor that holds the license, not the connected business. Further, these approvals were consistent with previous approvals for similar licenses and businesses as granted by the PLCB over the past several years. This language was recently codified by Act 39 of 2016, formerly known as House Bill 1690.

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Distributor licensees are generally prohibited from engaging in any other business except the sale of malt or brewed beverages. 47 P.S. § 4-492(12). The PLCB has promulgated a list of products which distributors are permitted to sell. The list is included in PLCB Advisory Notice No. 9 (5th Revision), available on the PLCB's website. Contrary to your assertion, it would not be permissible for a distributor licensee to unilaterally expand its selection of products and services beyond that which is specifically authorized in the above-referenced Advisory Notice.

Act 39 of 2016, effective August 8, 2016, amended the restrictions in the Liquor Code on the sale of alcohol at a place, property, or location where liquid fuels and oils are sold. Under the new Act, no liquid fuels or oil may be sold from a licensed premises, but interior connections between licensed premises and locations that sell liquid fuels and oil are permissible with PLCB approval. 47 P.S. §§ 4-404(a), 4-431(b), 4-432(d).

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

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