

August 3, 2016

Sue Flynn
Flynn Beverage, Inc.
VIA E-MAIL

RE: Renting Space to a Retail Licensee

Dear Ms. Flynn:

ISSUE: This office is in receipt of your e-mail of June 29, 2016, wherein you state that your company holds a distributor license. In light of Act 39 of 2016, you believe that your beer sales will decrease, and you will have empty space in your building. Consequently, you inquire if you can lease your empty space to “a licensee to sell six packs and wine.” It is assumed, for purposes of this response, that by “licensee,” you mean a restaurant liquor license holder.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Flynn Beverage, Inc., holds Distributor License No. D-727 (LID 8608) for use by it at premises located at 396 Golden Mile Road, Towanda, Pennsylvania.

OPINION: The Liquor Code imposes strict interlocking business prohibitions between distributors and retail licensees such as restaurants and eating place retail dispenser licenses. The Liquor Code provision on interlocking business practices provides, in pertinent part:

Excepting as hereinafter provided, no malt or brewed beverage manufacturer, importing distributor or distributor shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or in any mortgage against the same, for which a liquor or retail dispenser’s license is granted...

47 P.S. § 4-443(d)(emphasis supplied). Thus, you would not be permitted to lease your empty space to liquor licensee such as a restaurant licensee.

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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

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

LCB Advisory Opinion No. 16-281