

August 22, 2016

Randy Yeager
Bob's Beverage Inc.
VIA E-MAIL

RE: Sale of Distributor License

Dear Mr. Yeager:

ISSUE: This office is in receipt of your e-mail, dated July 19, 2016, wherein you indicate that you own a distributor license. You explain that you are concerned by the recent changes in legislation that you believe allow large corporations such as Sheetz and Walmart to sell beer. You note that recently a Sheetz store across the street from your business obtained a retail liquor license to sell beer. You are concerned that this will put you out of business; therefore, you ask if you may sell your distributor license to a large corporation, such as Sheetz or Walmart.

Records maintained by the Pennsylvania Liquor Control Board ("PLCB") indicate that Bob's Beverage, Inc. holds Distributor License No. D-3894 (LID 36770) for use by it at premises located at 131-139 North Broad Street, Ridgway, Pennsylvania. You are listed as the president, director, stockholder, and Board-approved manager.

OPINION: Be advised that it is the PLCB's Bureau of Licensing ("Licensing") initially, and the three-member Board ultimately, that decides whether the statutory requirements have been met, and whether or not to approve a transfer.

Transfers of distributor licenses are governed primarily by sections 431(b) and 468(a) of the Liquor Code. Section 431(b) provides that the applicant must be a reputable person. 47 P.S. § 4-431(b). To that end, the PLCB may refuse to transfer a license where the applicant, or any officer, director, member, or partner of the applicant has been convicted or found guilty of a felony within a period of five years immediately preceding the date of application for the transfer of the license. Id.

Additionally, the PLCB may refuse to transfer a license to a new location if the proposed location is within 300 feet of any church, hospital, charitable institution, school or public playground, or if the proposed licensed premises is within 200 feet of any other premises which is licensed by the board. Id. The PLCB may also refuse to transfer a license to a new location if the PLCB determines that it would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of 500 feet of the proposed location. Id.

Further, the PLCB may enter into a conditional licensing agreement (“CLA”) with the applicant which places additional restrictions on the license. Id. The provisions of the CLA are binding on the applicant and on subsequent holders of the license. Id. Failure to adhere to the provisions of the CLA may result in the issuance of a citation under section 471 of the Liquor Code and/or the nonrenewal of the license under section 470 of the Liquor Code. Id.

In addition to the above requirements set forth in section 431(b), section 468(a)(2) of the Liquor Code requires that the proposed licensed premises for a distributor be a building having an area of at least 1000 square feet under one roof. 47 P.S. § 4-468(a)(2). The proposed premises must also have an office separate and apart from the remainder of the premises to be licensed for the purpose of keeping records required by the PLCB, as well as adequate toilet facilities for employees of the licensee and an entrance on a public thoroughfare. Id.

Finally, be advised that section 438(c) of the Liquor Code prohibits a person from possessing more than one class of license. 47 P.S. § 4-438(c). Distributor licenses and retail licenses, such as a restaurant liquor licenses and eating place retail dispenser licenses, are two different classes of licenses. Therefore, a corporation that holds a retail license would need to divest its interest in the retail license before a transfer of a distributor license could be effectuated. Further, a corporation can only have an interest in one distributor license at a time; conversely, a corporation can have an interest in multiple retail licenses.

In sum, it would be possible to transfer your distributor license to a large corporation, provided that Licensing initially, and the three member Board ultimately, determine that all statutory requirements, including those outlined above, have been met.

Should you have any additional questions, do not hesitate to contact this office.

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

LCB Advisory Opinion No. 16-313