

October 12, 2016

Noah Naparsteck, Esquire
VIA E-MAIL

Re: Brewery Couplet Questions

Dear Mr. Naparsteck:

ISSUE: This is in response to your e-mail dated August 7, 2016, wherein you advise that you represent a brewery licensee (“G”) that holds a retail license at the same location (a “couplet”). You ask three questions, which will be restated below, followed by a response.

OPINION: *1. The licensee would like to have a third party manufacture the beer they currently manufacture onsite for both use at the premises and for sale off premises through a distributor. Is this permitted?*

Please note that section 446(a)(4) of the Liquor Code requires that the G produce at least 250 barrels of malt or brewed beverage per year on the licensed premises in order to also hold a retail license in connection with the G. 47 P.S. § 4-446(a)(4). This obligation of 250 barrels per year cannot be outsourced to another manufacturer, it must be made on the G’s licensed premises.

It would be possible to use another brewery to produce beer for you if the beer in question is in addition to the 250 barrels mentioned earlier. This type of arrangement, known as contract brewing, must meet certain requirements:

- (1) The manufacturer having its products brewed under contract, which is the ultimate seller of the malt or brewed beverages, must retain title to the products brewed by the contract brewer;
- (2) Both manufacturers involved in the contract must have manufacturer licenses in their respective states;
- (3) Both manufacturers must keep complete records for two years on production and sales of their respective products;
- (4) All brands of malt or brewed beverages offered, sold or delivered within Pennsylvania shall be properly registered with the Board, 47 P.S. § 4-445; 40 Pa. Code § 9.108;

- (5) Distribution of malt or brewed beverages within Pennsylvania shall be either by a Pennsylvania-licensed manufacturer, whose principal place of business is located in Pennsylvania and who retains title to the products, or by the appointed importing distributor or distributor for a specific geographical area by written agreement, 47 P.S. § 4-431(b);
- (6) All other Pennsylvania Liquor Control Board (“PLCB”) and federal Alcohol and Tobacco Tax and Trade Bureau requirements must be met by both parties to a contract brewing arrangement; and
- (7) All contractual agreements between manufacturers must be forwarded to Malt Beverage Compliance, P.O. Box 8940, Harrisburg, Pennsylvania 17105-8940, listing complete details of the contract before production begins.

A contract brewing arrangement would not be considered to be an additional license held by the licensee and would not restrict the licensee from acquiring another retail license (see below).

2. Would the answer to this inquiry change if the licensee were to obtain an interest in a retail license at another location?

If the licensee has its additional manufacturing needs supplied under a contract brewing arrangement, the licensee may obtain an interest in a retail license at another location. The contract brewing arrangement does not constitute an additional brewery license for the couplet holder.

Please note that a person who holds a 5% or less interest in a publicly or privately-held entity owning a restaurant or eating place retail dispenser license is not deemed to have a “financial interest” and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee. 47 P.S. §§ 4-411(e), 4-443(g).

3. Would the answer to the inquiry change if the licensee’s husband were to obtain an interest in a retail license at another location?

It is unclear based upon the information provided. If the husband has no interest whatsoever in the couplet licenses, the property where the couplet is located, or any financial backing such as a mortgage or other loan, or the husband obtains a 5% or less interest in the retail license, it may be permissible. Please note that such arrangements are

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investigated by the PLCB's Bureau of Licensing and a conclusive answer cannot be provided by this office.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB's Regulations, please feel free to once again 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,

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. 16-334