

October 3, 2016

Stanley J. Wolowski, Esquire
610 Smithfield Street, Suite 300
Pittsburgh, PA 15222

Re: Tied House Prohibition

Dear Mr. Wolowski:

ISSUE: Your letter of August 5, 2016 states that you represent BJ's Restaurant Operations Company ("BJ's"), which holds several restaurant liquor licenses as set forth in detail below. BJ's is contemplating operating one or more "brewery restaurants" in Pennsylvania with coupled brewery/restaurant licenses. You note that such arrangements are generally permissible as an exception to the prohibition in the Liquor Code on tied house businesses. You request confirmation that, if BJ's holds coupled restaurant and brewery licenses along with stand-alone restaurant licenses in Pennsylvania, all BJ's licenses in Pennsylvania would be deemed retail tier licenses; i.e., would meet the exception to the prohibition on tied house businesses.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that BJ's holds the following licenses:

- Restaurant Liquor License No. R-4277 (LID 71201) for use by it at premises located at 8970 Covenant Avenue, McCandless Crossing, McCandless, Pennsylvania 15237
- Restaurant Liquor License No. R-12626 (LID 73056) for use by it at premises located at 1819 Washington Road, South Hills Village, Pittsburgh, Pennsylvania 15241
- Restaurant Liquor License No. R-18242 (LID 73054) for use by it at premises located at 925 Plaza Boulevard, Lancaster, Pennsylvania 17601-2757
- Restaurant Liquor License No. R-12155 (LID 80707) for use by it at premises located at 665 Krocks Road North, Allentown, Pennsylvania 18106

OPINION: As referenced in your letter, sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license and a manufacturing license. 47 P.S. §§ 4-411; 4-443. It should be noted that a brewery ("G") license is considered a manufacturing license for purposes of the Liquor Code, and a restaurant liquor ("R") license is considered a retail license for purposes of the Liquor Code. Section 438(c) of the Liquor Code prohibits a person from possessing more than one (1) class of license. 47 P.S. § 4-438(c). However, sections 411 and 438 provide an exception which states:

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...an entity may acquire both a manufacturer's license or a limited winery license and a hotel, restaurant or retail dispenser license for use at the same location and more than one location may be so licensed. The licenses and a person's interest in the licenses or in the entity holding the licenses shall not be subject to this section.

47 P.S. §§ 4-411; 4-438(c).

A G license and an R license used by the same entity at the same location form a “couplet” and are deemed a retail license not subject to the interlocking business prohibitions noted above. Therefore, if BJ’s were to hold coupled restaurant and brewery licenses along with stand-alone restaurant licenses in Pennsylvania, all BJ’s licenses in Pennsylvania would be deemed retail tier licenses; i.e., they would meet the exception to the prohibition on tied house businesses. In that instance, BJ’s would not be able to also hold a stand-alone G license.

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,



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. 16-391