

November 1, 2016

Brandon Stetser
VIA E-MAIL

RE: Cider Promotion and Second Location

Dear Mr. Stetser:

ISSUE: This is in response to your August 25, 2016 e-mail to this office, wherein you provide that you have the following questions regarding some potential expansion plans that you are considering:

1. You ask whether your Pennsylvania Liquor Control Board (“PLCB”) brewery licensed establishment can produce “hard cider.”
2. If you are permitted to produce “hard cider,” you would like to utilize space near your current licensed brewery, but not physically attached to the building where your brewery is located (“Leased Space”), to produce the “hard cider.” You state that this Leased Space will also be utilized to operate a tasting room and storage area for the “hard cider,” and the beer produced at your current brewery. You ask if your current brewery’s licensed premises can be extended to cover the Leased Space or whether you need to apply for another brewery license for the Leased Space.
3. If you need to obtain a new brewery license for the Leased Space, you ask whether you will be permitted to use the Leased Space for a tasting room and storage area for the beer produced at your current brewery.
4. If you can extend your current brewery’s licensed premises to cover the Leased Space, you ask whether there are any costs to do this, other than the application fee that you need to consider.

Records of the PLCB indicate that Fetish Artisanal Ales, Ltd. trading as Fetish Brewing Company (“G”) holds Malt Beverage Manufacturing License No. G-522 (LID 68999) for use at the premises located at 325 Ice Avenue, Lancaster, Pennsylvania.

OPINION: As a threshold matter, since you are embarking on a significant commercial enterprise in a highly regulated area, you are strongly encouraged to seek private counsel experienced in Pennsylvania liquor law.

In response to your first question, it will be presumed for purposes of this response that your reference to “hard cider” means “alcoholic cider” as that term is defined in section 102 of the Liquor Code:

. . . a beverage which may contain carbonation in an amount not to exceed three hundred ninety-two one thousandths of a gram per one hundred milliliters and flavors, produced through alcoholic fermentation of any fruit or fruit juice, consisting of at least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

47 P.S. § 1-102. Therefore, your brewery license allows you to manufacture and sell “alcoholic cider” containing at least 0.5%, but not greater than 8.5%, alcohol by volume.

In response to your second question, section 7.21(b)(2) of the PLCB’s Regulations permits a licensee to extend its license to **immediate, abutting, adjacent, and contiguous** vacant land. 40 Pa. Code § 7.21(b)(2) (emphasis added). The PLCB has discretion to approve an application for extension to an area that is not immediate, abutting, adjacent or contiguous; however, typically such an area must be on the same premises or location as the licensed premises. Roberts v. Pennsylvania Liquor Control Board, 146 Pa. Cmwlt. 64, 604 A.2d 1152 (1992). Therefore, if your Leased Space meets the regulatory requirements of section 7.21(b)(2) of the PLCB’s Regulations, you would be able to file an extension application with the PCLB’s Bureau of Licensing (“Licensing”) by accessing the PLCB’s website at www.lcb.pa.gov. Click on “Licensees,” then “Resources for Licensees,” then “PLCB+,” and follow the directions therein. Please note that it is Licensing initially, and the three-member Board ultimately, that decides whether a particular extension request is in compliance with the Liquor Code and the PLCB’s Regulations, and whether or not to grant the extension.

However, if your Leased Space does not meet the above regulatory requirements for an extension, you may apply for an additional brewery license for the Leased Space because there is nothing in the Liquor Code or the PLCB’s Regulations that prohibits an entity from holding multiple licenses, provided such licenses are of the same class.

47 P.S. § 4-438(c). Therefore, you may hold multiple brewery licenses and the application for a brewery license is available through the PLCB's website as described above.

In response to your third question regarding the Leased Space's tasting room, please be advised that tastings or tasting events are defined in the PLCB's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quality and availability. 40 Pa. Code § 13.201. Tastings may be conducted by sponsors, which are defined as "any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is 21 years of age or older." *Id.* Tastings may be conducted on licensed or unlicensed premises, provided the following conditions are met: (1) any products used must be legally procured and registered, and the taxes thereon must be paid; (2) there can be no purchase requirement associated with the tasting or tasting event; and (3) no more than one standard size alcoholic beverage of each product may be provided to each tasting participant. 40 Pa. Code § 13.211(b).

PLCB Regulations provide that a standard-sized alcoholic beverage is twelve fluid ounces of malt or brewed beverage, four fluid ounces of wine (including fortified wine), or one and one-half fluid ounces of spirits. 40 Pa. Code § 13.201. Therefore, you would be able to do tastings at the Leased Space of the products produced at your proposed brewery and your current G.

As to being able to store your G's beer at your new brewery's proposed licensed premises, this would be permissible if the same legal entity held both brewery licenses. However, it would not be permissible if the same legal entity did not hold both brewery licenses. In addition, a Pennsylvania brewery may have two storage licenses to cover storage facilities, separate from the location of the manufacturing facility, and those storage facilities may be used to receive, store, repackage, sell, and distribute malt or brewed beverages in the same manner as they can at their place of manufacture. 47 P.S. § 4-431(a.2). Therefore, it would also be permissible for you to have a PLCB-licensed storage location at the Leased Space, in an area of the building that is not part of the new brewery's proposed licensed premises, to store the beer produced at your G. You would access the application for the additional storage location pursuant to the PLCB's website as provided in the response to your second question.

In response to your fourth question, section 7.22 of the PLCB's Regulations provides the following requirements for an extension application:

- a. To obtain Board approval, an application for extension of license describing the additional premises shall be filed with the Board.
- b. A fee of \$220 shall accompany an application for extension of license, and a physical inspection of the premises will be made whenever deemed necessary by the Board.
- c. An applicant for extension of premises shall post, for a period of at least 30 days beginning with the day the application is filed with the Board, in a conspicuous place on the outside of the licensed premises, a notice of application in a form, and size and containing provisions the Board requires concerning the requested extension. Proof of the posting of the notice shall be filed with the Board.

40 Pa. Code § 7.22.

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. 16-421