November 17, 2016

Brett Biggs
VIA E-MAIL

RE: Question Regarding Limited Distillery and Restaurant License

Dear Mr. Biggs:

ISSUE: This office is in receipt of your e-mail dated September 20, 2016, wherein you ask for clarification on the law surrounding placement of a restaurant liquor-licensed premises on the premises of your existing limited distillery. You indicate that you were informed by a licensing analyst from the Pennsylvania Liquor Control Board's ("PLCB") Bureau of Licensing ("Licensing"), that you must de-license any portion of the distillery that you wish to license under the restaurant liquor license. You were advised that particular rooms cannot be dual-licensed as part of both the limited distillery and the restaurant premises; therefore, since your kitchen is in the same room as the distillery, you would have to build a wall around the six-foot by ten-foot distillery in order to have it separately licensed from the kitchen that is intended to service the restaurant portion of the premises. You indicate that such a renovation would present local code issues, as well as render the kitchen almost non-usable, due to its small size.

You believe that this directive from the licensing analyst is contradicted by the PLCB's publication, "What Licensees Should Know About Act 113 of 2011," which states that limited distilleries may "Apply for and hold a restaurant, hotel, or eating place retail dispenser license to sell alcoholic beverages for on-premises consumption at the licensed distillery premises." In furtherance of your point, you cite to and quote section 505.4 of the Liquor Code, 47 P.S. § 5-505.4, which was amended by Act 113 of 2011.

You then ask a series of questions pertaining to section 505.4 and various aspects of the limited distillery and restaurant licenses. Your questions are set forth below, in the order in which you present them.

Records of the PLCB indicate that Christmas City Spirits LLC holds Limited Distillery ("AL") License No. AL-50 (LID 71334) for the premises located at 564 Main Street, Bethlehem, Pennsylvania.

OPINION: Preliminarily, because you are contemplating undertaking a significant endeavor, it is recommended that you seek guidance from private counsel experienced in Pennsylvania liquor law. Also, please be advised that all license applications are subject to the approval of Licensing initially, and ultimately the PLCB's three-member Board. The provision of answers to your questions should not be construed as approval of your pending license application.

1. Do we need to de-license the distillery premises to "make way" for the restaurant license, or can the two can operate concurrently in the same space, as we believe section 505.4 allows us to do?

By way of general information, sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license, such as restaurant or hotel, and a manufacturing license, such as a brewery or distillery. 47 P.S. §§ 4-411, 4-443. This is known as the "interlocking business prohibition." Section 438(c) of the Liquor Code also prohibits a person from possessing more than one class of license. 47 P.S. § 4-438(c). However, sections 411 and 438 provide an exception which states:

> ...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.

47 P.S. §§ 4-411, 4-438(c). This arrangement is referred to as a "couplet."

As you point out, authority for an AL licensee to obtain a restaurant liquor ("R") license for the same premises as the distillery is specifically granted in section 505.4, which was amended by Act 113 of 2011. However, what your interpretation of section 505.4 fails to consider is that all limitations and restrictions of the AL license and the R license, as set forth in the Liquor Code and PLCB's Regulations, still apply to the respective licensed premises.

As you are presumably aware, an R license authorizes its holder to sell alcoholic beverages only on the licensed areas of its premises between 7:00 a.m. and 2:00 a.m. 47 P.S. § 4-406(a.1); 40 Pa. Code § 7.21(a). R licensees may also sell, for consumption off-premises, no more than 192 fluid ounces of malt or brewed beverages in a single sale to one person. 47 P.S. § 4-407. In addition, following the enactment of Act 39 of 2016 ("Act 39"), R licensees that obtain a wine expanded permit can sell up to three liters of wine in a single transaction for consumption off-

premises. R licensees are not permitted to sell spirits for off-premises consumption or to manufacture alcohol on any part of their licensed premises.

Manufacturer licensees, such as ALs, are required to manufacture on the licensed premises. Section 505.4(b)(1) of the Liquor Code authorizes an AL to sell its distilled spirits on its licensed premises, between 9:00 a.m. and 11:00 p.m., to the PLCB, to other licensees of the PLCB, and to the general public. AL licensees can also sell its products at up to five additional Board-approved locations. 47 P.S. § 5-505.4(b)(2). There is currently no other provision in the Liquor Code or PLCB's Regulations that would allow an AL to sell its products from any other location, even for a limited time.

As you correctly state in a subsequent question, following the enactment of Act 39, ALs are also permitted to sell wine or malt or brewed beverages for on-premises consumption, provided that the wine and malt or brewed beverages are produced by PLCB-licensed limited wineries and licensed breweries.

In addition, section 511 of the Liquor Code states that:

> "Every license issued under the provision of this article shall specify by definite location every place to be occupied or used in connection with the business to be conducted thereunder. It shall be unlawful for the holder of any license to occupy or use any place in connection with any business authorized under a license other than the place or places designated therein."

47 P.S. § 5-511.

Therefore, due to the respective restrictions on manufacturer and retail licenses, the licensed portions of the premises, even for couplets, must be specifically identified in PLCB records and cannot overlap.

2. Depending on the answer to question one, can we have the actual distillery located in the kitchen of the restaurant, without having to build a wall around it, especially if building the wall would create a building, fire, or other code violation?

There is no requirement in the Liquor Code or PLCB's Regulations that a wall must be built, as the couplet that you propose is specifically authorized by the Liquor Code, as discussed above. Therefore, the mandates of the Liquor Code concerning interior connections to other businesses, such as a separating wall, do not apply. You

would simply have to specify the distillery as being part of the AL premises, with the kitchen being part of the R premises. Please note, however, that for the R license, only the areas of the premises that will be used for the sales, storage, or service of alcohol must be licensed. 47 P.S. 4-401(a). Therefore, it may not be necessary to license the kitchen as part of the R premises, if you do not intend to sell, serve, or store alcohol for the R license in the kitchen.

3. If we are able to hold the restaurant license on the licensed distillery premises as stated in "the act," can we sell our distillery's product by the bottle, for off-premises consumption, in the restaurant?

No. As discussed in response to question 1, the Liquor Code's restrictions on the R license concerning sales for off-premises consumption will still apply. Sales of your AL's products for off-premises consumption can only occur on the AL-licensed portion of the premises.

4. If we cannot sell bottles for consumption off-site at the restaurant, must we then have a premises with the building that is not licensed as a restaurant, but rather only as a limited distillery?

No. You may have portions of the existing premises licensed as the AL premises, and portions licensed as the R premises. The respective premises do not need to be separate structures.

5. Depending on the answer to question one, may we serve the products that we produce at the limited distillery, for on-site consumption in the restaurant-licensed area without additional reporting or the necessity to sell our distillery products to our restaurant, since they are part of the same business in the same building with the same owner?

It is unclear to what "additional reporting" you are referring. Tax-related questions should be directed to the Department of Revenue. For purposes of the Liquor Code and PLCB's Regulations, you must continue to maintain records of all liquor production and sales of alcoholic beverages by both the AL and R licenses, as well as the purchase or acquisition information for all alcohol on both premises. Because the licenses will be held by the same entity, it is not necessary that the liquor produced by your AL be sold to your R for usage on the R's premises.

6. Act 39 states that we may sell, under the authority of our limited distillery license, products produced by licensed limited wineries and licensed breweries in Pennsylvania. Act 39 also states that wineries

> may sell brewed products and liquor produced by Pennsylvania licensees, and breweries may sell liquor and wine produced by Pennsylvania licensees. May a limited distillery sell liquor from other limited distilleries, limited wineries sell wine from other limited wineries, and breweries sell malt or brewed beverages from other breweries, for on-premises consumption?

Yes, beginning on January 17, 2017. As a result of the enactment of Act 166 of 2016, AL licensees will be able to sell spirits produced by other PLCB-licensed distilleries for on-premises consumption. Similarly, licensed limited wineries and breweries will be able to sell products produced by other PLCB-licensed limited wineries and breweries, for on-premises consumption. More information concerning this and other changes promulgated by Act 166 will be posted on the PLCB website, www.lcb.pa.gov, in the near future.

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.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,

RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director, Office of Regulatory Affairs
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-464