

January 3, 2017

Jerome DePrator
DePrator's Beverage, Inc.
225 Lawrence Street
St. Mary's PA 15857

Re: Expansion of Business Questions

Dear Mr. DePrator:

ISSUE: This is in response to your letter received by this office on December 5, 2016, wherein you advise that you are the manager of a beer distributorship and that your parents hold the license. You are considering buying the license from your parents, but have some business concerns. The building that houses the licensed premises is in need of repair, and if you were to buy the business, you would like to construct a new building to serve as the licensed premises. You ask if the plans need to be approved by the Pennsylvania Liquor Control Board ("PLCB"). You also ask if you may sell food, such as subs, burgers, and deep-fried items, and if you would need the PLCB's approval. You ask if such items could be sold on the same property or out of the same building. You ask if an interior connection would be permitted or if each business would have to be divided by a wall, each with its own entryway.

Records of the PLCB indicate that DePrator's Beverage, Inc., holds Distributor License No. D-1220 (LID 8760) for the premises at 225 Lawrence Street, St. Mary's, Pennsylvania.

OPINION: Any change in ownership or location of a liquor license must be submitted for approval by the PLCB. The transfer application may be submitted on a prior approval basis, meaning that the PLCB's approval of the transfer is conditioned upon the successful completion of the new premises. That process is described in section 436(b) of the Liquor Code:

The description, information and plans referred to in this subsection shall show the premises or the proposed location for the construction of the premises at the time the application is made, and shall show any alterations proposed to be made thereto, or the new building proposed to be constructed

after the approval by the board of the application for a license, or for the transfer of an existing license to another premises not then licensed or to another person.

47 P.S. § 4-436(b). Thus, you could receive the PLCB's approval of the transfer of the license before beginning construction.

Regarding other items that you may sell, please note that distributors are restricted by provisions of the Liquor Code – 47 P.S. §§ 4-443(d), 4-492(12), 4-492(14), 4-493(17) – and section 9.93 of the PLCB's Regulations, 40 Pa. Code § 9.93. Enclosed please find a copy of the PLCB's Advisory Notice 9 (5th Revision), which lists the type of items a distributor is permitted to sell on the licensed premises. You will notice that this list does not include subs, burgers, or deep-fried items; you are not permitted to sell such items without approval from the three-member Board.

Regarding the location of another business beside the distributorship, please review the provisions of section 3.52 of the PLCB's Regulations:

- (a) A licensee may not permit other persons to operate another business on the licensed premises. If the premises are, in whole or in part, licensed by the Pennsylvania Gaming Control Board, a licensee may allow the holder of a slot machine license, issued by the Pennsylvania Gaming Control Board, to operate on its licensed premises.
- (b) Licensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board.
- (c) A licensee may not conduct another business on the licensed premises without Board approval.

40 Pa. Code § 3.52. In short, an interior connection to another business – operated by you or someone else – would require approval by the three-member Board. It would not be necessary to obtain such approval if the other business was not being operated on the licensed premises and did not have an interior connection to the licensed premises.

Finally, as you are considering undertaking a significant business venture in a highly regulated industry, it is recommended that you seek private counsel from an attorney who specializes in liquor law.

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
Tisha Albert, Director of Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-561