

January 12, 2017

Stanley J. Wolowski, Esq.
Flaherty & O'Hara, P.C.
VIA E-MAIL

Re: Use of Contract-brewed Beer by a Couplet

Dear Mr. Wolowski:

ISSUE: Your e-mail of December 27, 2016, seeks clarification regarding the use of malt or brewed beverages, manufactured by a brewery located in New York, by a Pennsylvania licensed brewery that also holds an adjacent restaurant liquor license. You indicate that the same individuals own both the New York brewery and the in-state brewery/restaurant, although the in-state brewery/restaurant is a wholly-owned subsidiary of the entity that owns the out-of-state brewery. You state that the breweries “produce the same beers.”

Your questions have arisen because, in order to meet rising demand, the Pennsylvania licensed brewery/restaurant wishes to receive beer made from the New York brewery, to be sold at the in-state brewery and restaurant premises. Your first question is whether such an arrangement needs to be done through contract brewing, even though the same individuals own both entities. You also ask whether beer received from the New York brewery may be sold at the Pennsylvania brewery and restaurant premises. You understand that the beer produced in New York cannot be sold to other licensees in Pennsylvania except through a distributor.

OPINION: With regard to your first question, based on your description it is clear that, despite having common individual ownership, the New York brewery and the Pennsylvania brewery/restaurant are separate entities. Therefore, in order to use an out-of-state brewery to produce beer, the Pennsylvania licensed brewery must do so through a contract brewing arrangement. The rules regarding contract brewing are provided in the Pennsylvania Liquor Control Board’s (“PLCB”) Advisory Notice No. 17 (attached).

As to your second question, a licensed brewery is permitted to:

[u]se brewery storage and distribution facilities for the purpose of receiving, storing and distributing malt or brewed beverages manufactured outside this Commonwealth if the beverages are distributed in this Commonwealth only through specific importing distributors who shall have first been given distributing rights for such products in designated geographical areas through the distribution system required for out-of-State manufacturers under section 431(b) as well as all other pertinent sections of this act. The manufacturer of the beverages must comply with section 444.

47 P.S. § 4-446(a)(3).

Accordingly, the licensed brewery in Pennsylvania may receive and store malt or brewed beverages made by the New York brewery but owned by the Pennsylvania brewery, pursuant to a contract brewing arrangement. However, it may not sell the beer to any licensees, i.e. distribute it, except to an importing distributor who has been given distribution rights for a designated territory in conformance with section 446(a)(3) and the rules regarding the three-tier distribution system.

Similarly, since the Pennsylvania brewery also holds a restaurant liquor license for use at the same location, which is referred to as a “couplet” arrangement, it would also be subject to section 446(a)(4) of the Liquor Code, which provides, in pertinent part, that couplet holders “shall not sell directly to any person licensed by this act, except if any malt or brewed beverage is to be distributed in this Commonwealth it shall be only through specific importing distributors who shall have first been given distributing rights for such products....” 47 P.S. § 4-446(a)(4). It should also be noted that a brewery holding a couplet must produce at least 250 barrels of malt or brewed beverages per year on the licensed premises. *Id.* This obligation of 250 barrels per year cannot be outsourced to a contract brewer.

Therefore, in answer to your specific question, the Pennsylvania licensed brewery may receive and store its beer, manufactured by the New York brewery under contract, at the brewery premises. Further, it may sell the beer to non-licensed customers, or it may give the beer to its own restaurant, since no sale is involved between a coupled brewery and restaurant. Again, however, any sales to licensed customers, other than a licensed importing distributor given distribution rights through a territorial agreement, would be prohibited. This inability to self-distribute applies both to the beer brought in under contract brewing, since it came from outside

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the commonwealth, and the beer made at the Pennsylvania brewery's premises, as a result of the couplet arrangement.

If you have any further questions or concerns regarding the Liquor Code or the PLCB's Regulations, please feel free to 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
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. 16-575

Enclosure: Advisory Notice No. 17