

December 31, 2018

Michelle R. Calvert, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042-7406
VIA E-MAIL

Re: Questions About Couplets

Dear Ms. Calvert:

ISSUE: This is in response to your e-mail dated October 17, 2018, wherein you advise that your client, Funck Brothers Enterprises, Inc. (“Funck Brothers”), holds three separate restaurant liquor licenses – two that are active, one that is held in safekeeping – and a fourth restaurant that does not hold a liquor license. Your client is contemplating the purchase of a brewery license. You ask several questions regarding couplets and brewery storage locations, which will be paraphrased and answered below.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Funck Brothers holds Restaurant Liquor License No. R-18925 (LID 68925) for the premises located at 664 West Main Street in Palmyra, Pennsylvania, and Restaurant Liquor License No. R-18359 (LID 71957) for the premises located at 363 West Main Street in Leola, Pennsylvania. In addition, Mt. Gretna Entertainment holds Hotel Liquor License No. H-4056 (LID 62807) for the location at 40 Boulevard Street in Mt. Gretna, Pennsylvania.

OPINION: As you are aware, section 411 of the Liquor Code generally prohibits someone from simultaneously holding an interest in both a retail license, such as restaurant liquor license and a manufacturing license, such as a brewery license:

No manufacturer and no officer or director of any manufacturer shall at the same time be a holder of a hotel, restaurant or club liquor license, nor be the owner, proprietor or lessor of any place covered by any hotel, restaurant or club liquor license.

47 P.S. § 4-411. Similarly, section 443 provides:

No manufacturer of malt or brewed beverages and no officer or director of any such manufacturer shall at the same time be a distributor, importing distributor or retail dispenser, or an officer, director or stockholder or creditor of any distributor, importing distributor or retail dispenser, nor, except as hereinafter provided, be the owner, proprietor or lessor of any place for which a license has been issued for any importing distributor, distributor or retail dispenser, or for which a hotel, restaurant or club liquor license has been issued:

47 P.S. § 4-443. This is known as an “interlocking business prohibition.”

In addition, 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). Section 438 provides 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. The licenses and a person’s interest in the licenses or the entity holding the licenses shall not be subject to this section.

47 P.S. § 4-438(c).

A restaurant liquor license and a brewery license may occupy the same location as long as the entity holding both licenses is the same. This configuration is known as a “couplet.” **Unless the arrangement qualifies as a couplet, it falls under the general prohibition and is impermissible.**

Your client is considering creating a new corporation (“New Corp.”) to purchase the assets of a Lebanon County licensee which holds a brewery license, a brew pub license and a brewery storage license. Funck Brothers plans to operate the brewery business at its existing location. You note that:

[Funck Brothers] would also like to utilize the restaurant owned by Funck Brothers Enterprises, Inc. that does not own a liquor license as a

storage area for the brewery. Would this arrangement be permissible or does it violate the “interlocking business prohibition?” Also, can they have a secondary storage area for the business owned by the new corporation at a restaurant owned by a different corporation, Funck Brothers Enterprises, Inc.?

Neither arrangement would be permissible because the officers and directors of the brewery would, at the same time, be the holders of restaurant liquor licenses and the owners, proprietors or lessors of two locations that are covered by restaurant liquor licenses. Moreover, the brewery license and the retail licenses would be at different locations. These scenarios would violate sections 411 and 443 of the Liquor Code. 47 P.S. §§ 4-411, 4-443.

Your client is considering an alternate arrangement in which New Corp. would also purchase a restaurant liquor license to be coupled at the same location as the brewery it desires to purchase. You ask if this arrangement would be permissible.

Yes, this would be permissible since it constitutes a couplet under section 438 and thus would qualify as an exception to the interlocking business prohibition. 47 P.S. § 4-438(c). Note that the legal entity holding the licenses must be the same and the location for each license must be the same.

Furthermore, please be advised that a brewery holding a couplet must produce at least 250 barrels of malt or brewed beverages per year. 47 P.S. § 4-446(a)(4). This obligation of 250 barrels per year cannot be outsourced to a contract brewer.

You ask if there is a particular order in which the purchases of licenses would need to occur. The Liquor Code and the PLCB’s Regulations do not expressly address the issue of timing of the two licensing actions contemplated in your fact pattern. However, because your client already holds retail licenses, they cannot acquire a manufacturing license until a retail license is already in place at the location where the manufacturing license will be located. Therefore, it is advisable to have the retail license in place before acquiring the manufacturing license for the same location. That arrangement would not affect your client’s ownership and operation of its existing restaurant license.

Finally, you ask if there would be any problem with one of the corporate officers continuing to own 100% of the stock of a corporation that holds its own restaurant

liquor license after the couplet is formed after the couplet is formed. As this license is also a retail license, his ownership does not violate the interlocking business prohibitions.

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

LCB Advisory Opinion No. 18-433