

January 8, 2019

Kurt L. Sundberg, Esquire  
Marsh Schaaf Attorneys  
300 State Street, Suite 300  
Erie, PA 16507  
**VIA E-MAIL**

**Re: Questions About Couplets and Brewery Storage Locations**

Dear Mr. Sundberg:

ISSUE: This is in response to your e-mail dated October 31, 2018, wherein you advise that your client is involved in four separate LLC entities that hold four separate restaurant (“R”) liquor licenses. One of the LLCs wants to acquire a brewery manufacturing (“G”) license for use at the same location as one of the restaurants, thereby operating as a couplet. You ask several questions regarding couplets and brewery storage locations, which will be paraphrased and answered below.

OPINION: Please note that the approval of any specific application is not done by this office but rather is initially approved by the PLCB’s Bureau of Licensing and then ultimately by the three-member board.

As you are aware, sections 411 and 443 of the Liquor Code generally prohibit someone from simultaneously holding an interest in both a retail license, such as restaurant, and a manufacturing license, such as a brewery. 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.

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. §§ 4-411, 4-438(c). An R license and a G license may occupy the same location as long as the entity holding both licenses is the same. This configuration is known as a "couplet." Please note that section 446(a)(4) of the Liquor Code requires that the brewery produce at least 250 barrels of malt or brewed beverage ("beer") per year in order to also hold an R license in connection with the brewery. 47 P.S. § 4-446(a)(4).

Your first question asks if the brewery portion of the couplet must have an area for the on-premises consumption of food and beer, or if all alcohol – including beer produced by the G licensee – and food may be consumed on the restaurant portion of the couplet.

When a brewery license is coupled with a restaurant license, the brewery portion of the couplet is not required to have an area for the on-premises consumption of food and beer. 40 Pa. Code § 3.93. Consumption of alcohol may be restricted to the restaurant portion of the couplet. Id.

Please note that when an R licensee obtains a G license, the G licensee may not sell directly to other licensees and must sell such product produced by the brewery through specific importing distributors who will have distributing rights for such products through a distribution system, otherwise known as the three-tiered distribution system. 47 P.S. § 4-446(a). However, this office has held that a brewery can self-distribute to the retail licensee in its own couplet.

Because the answer to your first question is that the brewery portion of the couplet is not required to have an area for the on-premises consumption of food and beer, your second, third, and fourth questions – which were predicated on the opposite conclusion – are moot.

Your next series of questions pertain to the following scenario: The G licensee of the couplet obtains a brewery storage ("GS") license at a location adjacent to another restaurant license, the second of the four R licenses owned by your client ("R<sub>2</sub>"). Your fifth question is whether this is permissible. It is permissible if the GS location is its own premises without an interior connection to the R<sub>2</sub> premises (which will be addressed in response to your eighth question).

Your sixth question is whether sales at the GS location are akin to sales at a non-coupled, G-licensed premises, or whether the GS location has the same privileges as the G-licensed premises that is coupled with an R license.

The privileges of the R license are limited to the specific premises identified in its liquor license. Even the G license, with which the R license is coupled, has a designated location on the property; the two licenses are not commingled. Therefore, the privileges of the R license do not extend to the GS license. The GS license is treated like a non-coupled, G-licensed premises.

Your seventh question asks, if the GS location is constructed adjacent to R<sub>2</sub>, can food from R<sub>2</sub> be served to the patrons in the GS location? The answer is yes. Pursuant to section 3.93(c)(4) of the PLCB's Regulations:

The brewery shall make food available to each patron who is consuming alcohol on the licensed premises while that person is consuming alcohol. Food must, at a minimum, consist of potato chips, pretzels and similar foods. **Food may be prepared by the brewery or by a third party.**

40 Pa. Code § 3.93(c)(4) (emphasis added).

Your eighth question asks if there can be a common connection or interior connection from R<sub>2</sub> to the GS premises. Such an interior connection would require approval of the PLCB's three-member Board, pursuant to section 3.52(b) of the PLCB's Regulations, which state: "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." 40 Pa. Code § 3.52(b).

Please note that where the Board has approved the operation of another business which has an inside passage or communication to or with the licensed premises, the extent of the licensed area shall be clearly indicated by a permanent partition at least four feet in height. 40 Pa. Code § 3.54.

Your ninth question asks if there can be a ten-foot-wide interior connection between the GS premises and the R<sub>2</sub> premises. Pursuant to section 468 of the Liquor Code, the PLCB may not approve an interior connection that is greater than ten feet wide between a licensed business and another business. 47 P.S. § 4-468(e)(1).

Finally, your tenth question asks if the GS premises and the R<sub>2</sub> premises may share a common hallway and restroom facilities. This scenario would be considered an interior connection issue and therefore would depend on the approval of the three-member Board. See 40 Pa. Code § 3.52(b).

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. 18-480