



September 21, 2020

Shelly M. Rowan, Esq.  
**VIA E-MAIL**

**RE: Brewery Tasting Questions**

Dear Attorney Rowan:

ISSUE: This is in response to your e-mail and attached letter dated February 19, 2020, wherein you state that you represent a promotion marketing agency who will be conducting a beer tasting tour for a major brewery in Pennsylvania. You ask whether your client could use and display a variety of branded and non-branded items to decorate the tasting area at the following locations: (1) on-premises licensed by a retail licensee; (2) on an area outside of the licensed premises and covered under the licensed area; (3) on an area outside of the licensed premises and not covered under the licensed area; (4) on an unlicensed premises not located near a retail licensee; (5) at an event covered under a special occasion permit (“SOP”) where the eligible entity does not sell tickets or charge admission to the event; and/or (6) at an event covered under an SOP where the eligible entity sells tickets or charges admission to the event. The branded items include a bar vehicle, backwall branded sign, barrels, beer keg seating, wooden crates, benches, and sampling glasses. The non-branded items include box hedges, café lighting with barrel bases, a generator, and portable draft dispensing equipment. You state that except for the wooden crates, all of the branded and non-branded items exceed \$300.00 each. You further state that none of the branded or non-branded items will be touched or used by a retail licensee or its employees or left with any retail licensee at its licensed location.

You also ask if your client attends an event covered under an SOP where the eligible entity sells tickets or charges admission to the event, will your client need to obtain an exposition permit and, if so, how does the exposition permit impact serving size. Finally, you state that your client would like to pre-advertise each of the tasting events in various media. You ask if the pre-advertisement can mention the retail location or the name of the festival and/or SOP holder for location purposes only.

OPINION: With regard to tasting events, tastings may be conducted by licensed brokers, manufacturers or their agents, distributors, or importing distributors on

licensed or unlicensed premises, provided the following conditions are met: (1) the products used are legally procured, properly registered, and taxes paid; (2) there is no purchase requirement associated with the tasting; and (3) no more than one standard size alcoholic beverage of each product may be provided to each tasting participant. 40 Pa. Code §§ 13.211(a)-(b). A standard size alcoholic beverage is defined as twelve ounces of malt or brewed beverage, four ounces of wine, or one and one-half ounces of distilled spirits. 40 Pa. Code § 13.201.

With reference to advertising such an event, please be advised that advertising of alcoholic beverages is permitted in Pennsylvania under section 498 of the Liquor Code. 47 P.S. § 4-498. Advertisements that make reference to prices must clearly identify the entity responsible for the advertisement; they may not be obscene, false, deceptive, or misleading; they may not be disparaging of the products of a competitor; and they may not make a monetary comparison between brands. 47 P.S. §§ 4-498(b), (e)(1). Should any prices be advertised, such advertisement must include prices that are in effect at the time of the advertisement. 47 P.S. § 4-498(c). Furthermore, advertisements shall not be directed to minors in order to promote consumption of alcoholic beverages, nor may advertisements be inconsistent with the spirit of safety or safe driving programs. 47 P.S. §§ 4-498(e)(4), (f).

Moreover, section 13.51 of the Pennsylvania Liquor Control Board's ("PLCB") Regulations provides, with certain exceptions, that no manufacturer, licensee, or group of licensees may contribute to or accept from another licensee or group of licensees of a different class, anything of value by means of advertisement, contributions, purchase, sale of tickets, donations or by any device, for any purpose. 40 Pa. Code § 13.51. However, this office has historically approved cooperative advertising between beer manufacturers and retail licensees so long as each party pays its proportional, fair-market-value share for the cost of the advertisement. Therefore, so long as your client and the retail licensee pays its proportionate fair market share for the advertising and otherwise complies with the rules regarding advertising as outlined above, a pre-advertisement would be permissible under the Liquor Code and the PLCB's Regulations.

With regard to your questions related to the use of branded and/or non-branded items, section 493(17) of the Liquor Code prohibits a licensee from providing equipment or fixtures to other classes of licensees. 47 P.S. § 4-493(17). With that being said, retail liquor or retail malt or brewed beverages licensees are permitted to use POS materials inside the licensed premises that display advertising of brand names of products sold there, other than a window or door display. 47 P.S. § 4-

493(20)(i); 40 Pa. Code § 13.43; Advisory Notice No. 10 (8th Revision). However, the total cost of all POS advertising material relating to any one brand of any one manufacturer at any one time may not exceed \$300.00 on a retail licensed premises. 47 P.S. § 4-493(20)(i). Thus, on any retail licensed premises, your client would not be permitted to use or display any branded or non-branded items if the cost of the materials exceeds \$300.00, or if the materials could be considered equipment or fixtures. The above provisions would not prevent the use of the items on unlicensed premises or at events covered under an SOP, so long as the SOP holder does not otherwise hold a license issued by the PLCB.

Where there is a ticket or entry fee associated with an event that involves alcohol, the organizers must typically hold an SOP, which may be used for nine consecutive or nonconsecutive days and an additional ten consecutive days per calendar year to engage in alcohol sales during the same hours as restaurant liquor licensees. 47 P.S. § 4-408.4. SOPs are only available to certain “eligible entities,” as defined in section 102 of the Liquor Code, 47 P.S. § 1-102, and are meant to be used to raise funds for the entity and its cause. There are numerous rules governing events conducted under the authority of an SOP, as found in section 408.4 of the Liquor Code, 47 P.S. § 4-408.4. If an individual or entity is not selling tickets or charging admission to an event, then it is unlikely that the individual or entity would need to obtain an SOP.<sup>1</sup>

Regardless of whether an event is conducted under the authority of an SOP, exposition permits are available to PLCB-licensed manufacturers such as breweries, wineries, and distilleries. 47 P.S. §§ 4-446(c)(1), 5-505.2(a)(4), 5-505.4(b)(8). Breweries participating in a festival must obtain a malt or brewed beverages and food exposition permit from the PLCB to **sell beer** and provide samples. Malt or brewed beverages and food expositions are defined as affairs held indoors or outdoors with the intent of educating those in attendance of the availability, nature, and quality of malt or brewed beverages in conjunction with suitable food displays, demonstrations, and sales. These expositions may also include activities other than malt or brewed beverages and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits, and farmers markets. 47 P.S. § 4-446(c)(1). A holder of this permit would be permitted to provide tasting samples of up to four fluid ounces, which may be sold or offered free of charge, and sell by the

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<sup>1</sup> Individuals or entities that do not hold liquor licenses issued by the PLCB may give away complementary alcoholic beverages to persons who are not visibly intoxicated and are at least twenty-one years of age. 47 P.S. § 4-493(1).

glass, growler, bottle, or package up to 192 fluid ounces in a single sale. *Id.* Please note that it is not necessary for a brewery to obtain a malt or brewed beverages and food exposition permit to participate in an event conducted under the authority of an SOP. However, if the brewery is operating under a malt or brewed beverages and food exposition permit, it would be limited to tasting samples of up to four fluid ounces.

Finally, you may wish to contact the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) to determine whether there are any applicable federal laws that may govern the business activities you are contemplating. You may visit the TTB’s website at [www.ttb.gov](http://www.ttb.gov) for more information.

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

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. 20-225