

AMENDED ADVISORY OPINION No. 99-2

March 12, 1999

Henry A. Ortlieb
President
Henry Ortlieb's Original Philadelphia Brewing Co.
829-51 N. American St.
Philadelphia, PA 19123

RE: Distribution of Other Breweries' Products

Dear Mr. Ortlieb:

ISSUE: Your November 13, 1998 letter to Board Secretary, John Reiley has been forwarded to this office for response. According to that letter, your brewery, which holds license number G-299, currently distributes its own products in the Philadelphia area, and you are seeking permission to distribute the products of other breweries in the same area.

OPINION: A manufacturer's license permits the holder to "produce and manufacture malt or brewed beverages, and to transport, sell and deliver malt or brewed beverages from the place of manufacture. . . ." [47 P.S. §4-431(a)]. Liquor Code section 431 also provides that a Pennsylvania manufacturer whose principle place of business is located in Pennsylvania may name or designate a distributor or importing distributor as a primary or original supplier of its products, or it may distribute its own product within a specified geographical area if it has not named an importing distributor or distributor licensee as its primary or original supplier within that particular territory. In addition, under section 446(3) of the Liquor Code [47 P.S. §4-446(3)], holders of brewery licenses may use their facilities "for the purpose of receiving, storing and distributing malt or brewed beverages manufactured outside this Commonwealth if the beverages are distributed in the Commonwealth" Section 446(3) requires that such distribution only be through specific importing distributors who have the distributing rights for such products in designated geographical areas pursuant to section 431(b) and all other relevant sections of the act. The manufacturer of such beverages must comply with Liquor Code section 444 (malt or brewed beverages manufactured outside this Commonwealth). [47 P.S. §4-446].

Based upon the above, Henry Ortlieb's Original Philadelphia Brewery Company is permitted to distribute its own products in the Philadelphia area if it has not named an importing distributor or distributor licensee as its primary or original supplier for that territory. **In addition, Henry Ortlieb's Original Philadelphia Brewery Company would be permitted to distribute the products of other out-of-state breweries in accordance with existing territorial agreements**

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and keeping within the three tier system. Also note that all malt or brewed beverages coming from out of state shall come to rest and be unloaded at the importer's premises for distribution. [47 P.S. §4-441(b)].

Enclosed for your review are copies of sections 431, 444 and 446 of the Liquor Code.

Please do not hesitate to contact this office if you have any further 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.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police-
Bureau of Liquor Control Enforcement

Enclosures

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 99-002-a