

February 16, 1999

Mr. James R. Eppley
Director of Purchasing
ALLEGHENY AIRLINES, INC.
1000 Rosedale Avenue
Middletown, PA 17057

Dear Mr. Eppley:

ISSUE: This office is in receipt of your January 12, 1999 letter in which you indicate that your company operates a regional airline passenger service, a subsidiary of USAirways Group, which is headquartered in Middletown, Pennsylvania and possesses Public Service Liquor License No. P-33. You stated that your company presently purchases some of its liquor at an outlet in Maryland and you request an opinion from this office regarding the legality of this practice. The liquor is delivered to BWI Airport where your employees then load the liquor onto one of your airplanes for delivery to Middletown. You feel that the practice is permissible in light of the fact that the order point is in Maryland, the delivery point is in Maryland and your employees place the liquor on your aircraft in Maryland for shipment into Pennsylvania.

OPINION: Your practice of purchasing alcohol in Maryland and transporting it into the Commonwealth of Pennsylvania is permitted by the Liquor Code and the Board's regulations to the extent that sales are made within the Commonwealth only while your planes are in transit. Section 491(2) of the Liquor Code prohibits any person from possessing or transporting any liquor or alcohol within Pennsylvania unless it has been purchased from the Board's wine and spirits shoppes or from a licensed limited winery. [47 P.S. §4-491(2)]. In addition, section 491(3) of the Liquor Code makes it unlawful "[f]or any person within this Commonwealth, by himself or by an employe or agent, to attempt to purchase, or directly or indirectly, or upon any pretense or device whatsoever, to purchase any liquor or alcohol from any person or source other than a Pennsylvania liquor store, except in accordance with the provisions of this act or the regulations of the board." [47 P.S. §4-491(3)]. In addition, section 491(11) provides that it is unlawful "[f]or any person, other than the board or the holder of a sacramental wine license or of an importer's license, to import any liquor whatsoever into this Commonwealth" [47 P.S. §4-491(11)]. Section 491(11) is not construed to prohibit railroad and pullman companies and airlines with public service liquor licenses from selling liquor purchased outside the Commonwealth in the dining, club and buffet cars operated or in transit in the Commonwealth. [47 P.S. §4-491(11)]. Therefore, as long as the airplanes are in transit when the sales occur, they would be permissible.

Mr. James L. Eppley
February 16, 1999
Page Two

While your letter did not address the issue of storage of liquor in the Commonwealth of Pennsylvania following its purchase in Maryland, please be advised that storage of liquor in your Middletown facility is permissible as long as the facility is purely a temporary staging area and the liquor will be held there for only a short time until sent on to be served and/or sold in another plane. Otherwise, section 9.121 of the Board's regulations requires liquor legally imported into the Commonwealth by a licensed importer or by the holder of an AB permit to hold a bonded warehouse license so that it may receive and store such liquor. [40 Pa. Code §9.121].

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

c.c. Pennsylvania State Police
Bureau of Liquor Control Enforcement
D. C. Martin, Director of Licensing

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

LCB Advisory Opinion No. 99-048