

May 7, 1999

J. Sansone
Marketing & Sales Support Manager
ANTONIO ORIGLIO, INC.
2000 Bennett Road
Philadelphia, PA 19116

RE: Article in Philadelphia Daily News

Dear Mr. Sansone:

ISSUE: This is in response to your letter of March 24, 1999 regarding an article published in the Philadelphia Daily News on March 23, 1999. The article referred to a restaurateur entering into a joint venture with a concessionaire and an out-of-state manufacturer for the purpose of operating a restaurant at Veterans' Stadium in Philadelphia. You question the legality of the proposed arrangement as it relates to the restaurant selling only the out-of-state manufacturer's beer to the exclusion of all other brands.

OPINION: Please be advised that the Liquor Code and Board Regulations do not address the issue concerning the number of brands of beer a restaurant may offer and thus a restaurant's decision to sell one brand of beer is not a violation of the Liquor Code.

What may be unlawful is a manufacturer's involvement financially in a liquor or retail dispenser license. The Liquor Code specifically prohibits such an arrangement and the Board would reject an application for a restaurant license as described in your letter. [47 P.S. Section 4-443(d)]. However, a check of the Board's Bureau of Licensing records failed to show any application for a restaurant liquor license at Veterans' Stadium. Furthermore, all malt beverages must be imported through importing distributors. [47 P.S. Section 4-431]. Importing distributors and distributors have the sole discretion to establish prices and decide what brands to carry. [47 P.S. Section 4-431(d)(1)].

Since the Pennsylvania State Police Bureau of Liquor Control Enforcement is responsible for enforcing the Liquor Code and Board Regulations and not the Pennsylvania Liquor Control Board, this alleged situation may warrant its scrutiny and possible investigation.

If this office can be of any further assistance, please do not hesitate to call or write.

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: Bureau of Liquor Control Enforcement,
Pennsylvania State Police
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Advisory Opinion No. 99-157