

May 11, 1999 VIA FAX 813-229-0134

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**RE: Dispensing System for Distilled Spirits Product**

Dear Ms. DeConti:

**ISSUE:** This is in response to your April 8, 1999 letter faxed to this office on April 9, 1999. In your letter you indicated that you represent a licensed producer and importer of distilled spirits that is developing a system to dispense a distilled spirits product. In your letter you indicated that the dispensing system will operate similarly to the system commonly employed to dispense malt beverages at on-premises locations and would utilize virtually the same equipment, for example: a tap standard, tap marker, tapping head, CO2 gas system, hoses, valves and other minor tapping system components. You indicate that the one key difference is that the distilled spirits product would be sold to the retailer by a wholesaler in its original container, and then combined by the retailer with a non-alcoholic drink mixed to create a mixed drink such as a daiquiri or a margarita. The mixed product would then be dispensed out of a 5 gallon canister rather than a keg.

Specifically, you asked the following questions:

- (1) What components of the tapping system may be furnished to the retailer without charge and which must be either sold, loaned or leased?
- (2) What specific conditions apply to the furnishing without charge, sale, loan or lease of tapping system components to the retailer including whether such components must be supplied by the wholesaler or a third-party vendor or manufacturer of the components? Would the loan of equipment, for instance, be permissible if the equipment was clearly marked as being the property of the wholesaler, and the retailer entered into an agreement setting forth the terms of the loan of equipment?
- (3a) Given the proliferation of beer brands and taps at on-premise locations, if the retailer decided to serve the mixed drink through an ancillary cold coil system, could the supplier or wholesaler of the distilled spirits product furnish at no charge, loan or lease the cold coil system to the retailer?
- (3b) If not, can the cold coil system be purchased by the retailer from either the wholesaler, or a third party vendor or manufacturer of equipment?
- (3c) What condition or restrictions may apply?
- (4a) Are there any restrictions on the mixing of the distilled spirits product with the non-alcoholic mixer by the retailer as described or on the dispensing of the mixed drink through the tapping system?
- (4b) What conditions or restrictions may apply?
- (5a) May the supplier of the distilled spirits product contract with a third-party service company to provide initial installation services of the tapping system components to the retailer and to provide services for the cleaning and maintenance of the system during the period the tapping system is in place?
- (5b) What conditions are required or restrictions may apply?

**OPINION:** Preliminarily, please note that section 491(7) of the Liquor Code prohibits any manufacturer or licensed importer of liquor in the Commonwealth of Pennsylvania from selling any liquor in the Commonwealth of Pennsylvania except to the Board for use in Pennsylvania liquor stores. [47 P.S. Section 4-491(17)]. With respect to the use of a liquor-based frozen beverage dispenser, please be advised that section 493(17) of the Liquor Code [47 P.S. Section 4-493(17)] prohibits any licensee from owning any interest, directly or indirectly, in or being employed or engaged in any business which involves the manufacture or sale of any equipment, furnishings or fixtures to retail dispensers. Also, section 411(c) of the Liquor Code [47 P.S. Section 4-411(c)] prohibits a manufacturer from holding a direct or indirect interest in the ownership or leasehold of any equipment given to retail licensees. Additionally, section 491(4) of the Liquor Code [47 P.S. Section 4-491(4)] prohibits the use of decanters of alcoholic beverages by licensees, except for wines. Section 491(10) of the Liquor Code [47 P.S. Section 491(10)] prohibits the refilling of any bottles or containers which contain liquor with any liquid or substance whatsoever. However, this office historically has approved the use of glass containers to store liquor so long as the actual drinks were dispensed in other glass containers. Accordingly, your client, a licensed producer and importer of distilled spirits, would not be permitted to provide the liquor-based frozen beverage dispenser to retail licensees. However, nothing in the Liquor Code or Board's regulations prohibits a retail licensee from procuring a frozen beverage dispenser from a third-party, non-licensed vendor.

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

Robert P. Kaskiel

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Advisory Opinion No. 99-165