

May 20, 1999

Keith A. Clark, Esquire  
SHUMAKER WILLIAMS, P.C.  
P. O. Box 88  
Harrisburg, PA 17108

**In re: Your File No. 227-99**

Dear Mr. Clark:

ISSUE: This is in response to your faxed letter of April 14, 1999 to this office in which you request our opinion concerning retail licensees pooling their beer orders together in order to receive a quantity discount from a distributor. You are aware that LCB Advisory Opinion No. 96-158 permits that situation, but you want to know whether the distributor's discount can be premised upon a commitment by the retail licensees to purchase a specific quantity of beer over an extended, set period of time. In the event that the pooling group does not actually purchase the volume required for the discount within the specific period of time to which they commit, the distributor can contractually charge the pooling retailer group the outstanding difference between the discounted price and the distributor's standard, non-discounted price.

OPINION: You are correct that LCB Advisory Opinion No. 96-158 states that there is nothing in the Liquor Code which would prohibit retail licensees from pooling their beer orders together in order to receive a quantity discount from a beer distributor. It would also be permissible for the distributor's discount to be premised upon a commitment by the retail licensees to purchase a set amount over a set period of time, with contingencies if the retail licensees did not actually purchase that amount. Although section 447 of the Liquor Code [47 P.S. Section 4-447] contains language limiting the increasing and decreasing of prices, that section and its attendant regulations [40 Pa. Code Sections 11.201-11.205] are no longer being enforced due to a recent decision of the United States District Court for the Middle District of Pennsylvania. Therefore, such a contractual arrangement between the distributor and retail group would be permissible at this time.

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

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

LCB Advisory Opinion No. 99-180