

July 2, 1999

Telephone: 717-783-9454
FAX: 717-787-8820

Linda L. Baker, Secretary
Edwin H. Kleckner, Inc.
P.O. Box 20
Montandon, PA 17850

Dear Ms. Baker:

ISSUE: This office is in receipt of your letter dated June 3, 1999 in which you request an opinion concerning the legality of Edwin H. Kleckner, Inc., an importing distributor, selling beer-branded glassware to its tavern accounts. In addition, you inquire whether it is legal to give taverns the above-mentioned glassware for use in promotions.

OPINION: Section 493(17) of the Liquor Code prohibits any licensee from providing equipment or fixtures to other classes of licensees. [47 P.S. Section 4-493(17)]. The Board has traditionally considered glassware to be equipment for retail licensees. Therefore, an importing distributor, such as Edwin H. Kleckner, Inc., may not sell or otherwise give its tavern accounts, i.e., retail licensees, such beer-branded glassware for use in their establishments, or for promotions.

In addition, while distributors and importing distributors may not provide or sell brand-identified glasses to retail licensees, there is nothing prohibiting retail licensees from purchasing brand-identified glasses from non-licensed third parties, other than malt or brewed beverage manufacturers. Therefore, if your tavern accounts obtain the beer-branded glassware in the aforementioned manner, they would be permitted to distribute them to their customers during promotions, with or without product purchase.

Enclosed is copy of section 493(17) 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

Enclosure
cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

LCB Advisory Opinion No. 99-237

SECTION 493. UNLAWFUL ACTS RELATIVE TO LIQUOR, MALT AND BREWED BEVERAGES AND LICENSEES.

The term '**licensee**,' when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful -

(17) **Licensees, etc., interested or employed in manufacturing or sale of equipment or fixtures.** For any licensee, or any officer, director, stockholder, servant, agent or employe of any licensee, to own any interest, directly or indirectly, in or be employed or engaged in any business which involves the manufacture or sale of any equipment, furnishings or fixtures to any hotel, restaurant or club licensees, or to any importing distributors, distributors or retail dispensers: Provided, however, That as to malt or brewed beverage licensees, the provisions of this subsection shall not apply to such a conflicting interest if it has existed for a period of not less than three years prior to the first day of January, one thousand nine hundred thirty-seven, and the board shall approve.

Enclosure 1