

July 13, 1999

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Dear Mr. O'Brien:

ISSUE: In your fax dated July 12, 1999 you ask whether an importing distributor licensee may have written franchise rights granted from an out-of-state manufacturer of malt or brewed beverages in such a configuration that the licensee's premises are not located in a county for which it holds territorial rights. In all other respects the territories granted by the manufacturer are contiguous.

OPINION: Section 431(d)(2) of the Liquor Code states that with regard to territorial agreements granted after January 1, 1996, records must be maintained showing that every case of malt or brewed beverages imported by the importing distributor has been sold, delivered and transported 'either from a point or to a point within the assigned geographically contiguous territory' to licensed or unlicensed customers. [47 P.S. Section 4-431(d)(2)]. In addition, section 441(g) of the Code requires importing distributors be invoiced for all malt or brewed beverages coming from outside of the Commonwealth which shall come physically to rest and be unloaded into and distributed from importing distributor premises. [47 P.S. Section 4-441(g)].

As long as the importing distributor meets the requirements of these provisions of the Liquor Code, and all territories granted by the manufacturer are contiguous, it is permissible for the importing distributor to have its premises located in a county for which it does not have territorial rights. Under this scenario, the importing distributor may not sell directly to unlicensed customers at its licensed premises.

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

LCB Advisory Opinion No. 99-245