

December 2, 1999

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

Jay F. Goldstein
Acting President
Pennsylvania Beer Wholesalers Association
P.O. Box 7
1438 Chestnut Street
Emmaus, PA 18049

Dear Mr. Goldstein:

ISSUE: In your letter faxes dated November 12 and 24, 1999, you ask whether proposed agreements would meet the requirements of the Liquor Code to allow importing distributors to sell the products of a manufacturer to other importing distributors who have territorial rights for the same products in different areas of Pennsylvania.

The first proposed agreement states in pertinent part, 'Therefore, _____ (importing distributor A), a properly appointed, franchised importing distributor representing _____ (brewery) has been properly authorized and given, in writing, specific rights to sell and/or purchase from, out of its assigned geographical territory, the products of the aforementioned brewery to another franchised importing distributor named here as _____ (importing distributor B), another properly appointed, franchised importing distributor representing the same _____ (brewery) and which importing distributor has also been properly authorized, in writing, with the same authority as the importing distributor described above. The importing distributors noted herein agree to purchase from and sell to each other in accordance with all provisions of the Pennsylvania Liquor Code. (signature line for each importing distributor).'

The second proposed agreement for this purpose states 'The importing distributors who have signed a 'Signature Page,' a copy of which is attached hereto, are all importing distributors who possess the appropriate authority from the manufacturer, brewer or importer, to sell the products of such manufacturer to one another and who hold distributing rights with the Commonwealth of Pennsylvania from the manufacturer noted here: _____ (name, address, signature for manufacturer).' A signature page for all importing distributors is attached to the agreement listing those agreeing.

OPINION: As stated in your letter, section 431(b) of the Pennsylvania Liquor Code provides that an out-of-state manufacturer may authorize one importing distributor holding distributing rights for a specific area for the manufacturer's products to sell such products to another importing distributor holding distribution rights for another geographical area for the same products as long as the authority is in writing and a copy is given to each importing distributor. [47 P.S. Section 4-431(b)].

As stated in the notice of September 24, 1999 to importing distributors and manufacturers, written agreements must be in place between the importing distributors involved in the sales to other importing distributors with different territories to ensure that proper records are maintained for these sales. In this situation, such agreements may be very simple and may include multiple importing distributors for each manufacturer in the same document.

The agreements which you have proposed meet all the requirements of the Liquor Code. Please keep in mind that all agreements and written authority from the manufacturer for these sales must be submitted to Malt Beverage Compliance. [40 Pa. Code Section 9.96].

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

c.c. Pennsylvania State Police
Bureau of Liquor Control Enforcement
Malt Beverage Compliance

LCB Advisory Opinion No. 99-375