

December 16, 1999

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Milissa Woodward
Wet Your Whistle Beverage
1136 Federal Street
Lebanon, PA 17042

Dear Ms. Woodward:

ISSUE: This is in response to your letter of October 29, 1999 in which you inquire about the Country Garden Six Pack, which you understand plans to build a beer distributor adjacent to its current business, which is a six-pack store and eatery. In particular, you ask whether the Liquor Control Board will provide any protection that will prevent 'yet another distributor in our area.' You also ask if one is permitted to own a six-pack license and a 'D' license, and if so, is it permissible for that person to feed their six-pack store from their new distributorship.

OPINION: Sections 404, 431(b), and 432(d) of the Liquor Code [47 P.S. Sections 4-404, 4-431(b), and 4-432(d)], contain the statutory law regarding the proximity of one licensee to another. In essence, these statutes give the Liquor Control Board the discretion to refuse an application for a new license, or an application for the transfer of a license, to a new location, when the location of the proposed licensed premises is within 200 feet of any other premises that is licensed by the Board. Note that the Board's power is discretionary in such a situation. This means that the Board may, but does not have to, refuse the application should it so choose. Therefore, should someone apply for a license, and that new or transfer location is within 200 feet of a beer distributor, or vice versa, the Board has the power to either grant or refuse the application on the basis of that factor alone.

Measurements are taken in a straight line from the parts of the proposed licensed premises and the existing (other) licensed premises nearest to each other, regardless of any intervening land, water, buildings, and so on. [40 Pa. Code Sections 3.22 and 3.23]. An investigator from the Board's Bureau of Licensing would take the measurements at the time of his or her investigation of the application for the license.

In your letter, you state that your distributor, Wet Your Whistle Beverage, is one-half mile from the Country Garden Six Pack store and the proposed distributor. Thus, based solely on distance, the Liquor Control Board would not be able to refuse the application since there is more than 200 feet between your distributor and the proposed distributor. However, you might want to consider consulting a private attorney about filing a petition to intervene in this matter. A petition to intervene would require you to show how you will be directly aggrieved if the Board grants a license at the proposed location. Section 443(b) of the Liquor Code prohibits a distributor or importing distributor from, at the same time, being a retail dispenser or a liquor licensee. Thus, under section 443(b) of the Liquor Code, it would not be permissible for a person to own both a six-pack license (i.e. retail dispenser) and a distributor license. However, nothing in the Code would prevent two different members of one family from having two separate licenses, as long as both family members are in compliance with section 443(b) of the Liquor Code, a copy of which is attached.

Finally, the Liquor Code does set limits as to the number of distributor and importing distributor licenses the Board may issue in an area, but those limits are based on county and not on municipality totals. [47 P.S. Section 4-437(f)].

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

LCB Advisory Opinion No. 99-400