

December 30, 1999

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Gary A. Friedberg, Esquire
230 S. Broad Street
17th Floor
Philadelphia, PA 19102

Dear Mr. Friedberg:

ISSUE: This is in response to your October 20, 1999 letter which you submitted on behalf of Hops Grill & Bar, Inc. and Avado Brands, Inc. According to your letter, Avado Brands, Inc. (Avado), a publicly-traded corporation, is the corporate parent and sole shareholder of Hops Grill & Bar, Inc. (Hops). Hops owns and operates approximately sixty (60) full-service restaurant/microbreweries in thirteen other states. It does not engage in any wholesale activities but rather sells its beer directly to its restaurant patrons. Avado is also the corporate parent and sole shareholder of several restaurant entities, such as Don Pablo's Mexican Restaurants, McCormick & Schmick's Seafood Houses, and Canyon Cafés, operating in numerous states including Pennsylvania. These restaurants are licensed in Pennsylvania under the corporate name of Don Pablo's Restaurant, Inc. Avado is also a 50% owner in an additional restaurant which holds Restaurant Liquor License No. R-6964. Your inquiry is whether Hops could apply for brewery and restaurant liquor licenses in Pennsylvania.

OPINION: The Liquor Code imposes strict and rigid interlocking business prohibitions. Thus, under sections 411 and 443 of the Liquor Code, no manufacturer - and this includes a brewery - and no officer or director of any manufacturer shall maintain any financial interest whatsoever in a hotel or restaurant license. Likewise, no manufacturer or officer, director, stockholder, agent or employee of a manufacturer shall have any direct or indirect interest in any ownership or leasehold of any property or equipment of any property or have a mortgage lien against any property located on hotel, restaurant or club licensed premises. These two sections make it clear that the purpose of these prohibitions is to separate the financial and business interests between manufacturers and restaurant licensees. [47 P.S. 4-411(e), 4-443(g)].

An exception to these prohibitions allows the holder of a brewery license to acquire a restaurant license for use at the brewery location. This exception is written from the perspective of the brewery license and thus allows breweries to obtain restaurant licenses so long as the licenses are at brewery locations.

Since the corporate parent and sole shareholder of your client Hops has an interest in a series of restaurant licenses in Pennsylvania already, Hops could not acquire an interest in a brewery license. If Avado and Hops did not already have an interest in any other restaurant liquor licenses, the wording in sections 411 and 443 of the Liquor Code allows for an entity to own a restaurant license at each brewery location.

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. 99-411