

December 31, 1999

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Louis E. Caputo  
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Dear Mr. Caputo:

ISSUE: In your letter dated December 3, 1999, you ask whether an importing distributor (ID) may act as a secondary distributor in an area for which the rights were sold to another importing distributor. The area in question is now within the territory of a third primary ID for this particular brand. You also ask whether an importing distributor may legally purchase distributing rights for territories which are not geographically contiguous for the brand in question, but are geographically contiguous with regard to other brands of the manufacturer.

OPINION: Section 431(b) states that each out-of-state manufacturer of malt or brewed beverages shall give distribution rights for its products to specific importing distributors, who are limited to selling or delivering malt or brewed beverages of that brand to any person with a license, if their licensed premises are located within the geographical area that the importing distributor has been granted. [47 P.S. Section 4-431(b)]. An importing distributor shall not sell or deliver to another importing distributor without first having entered into a written agreement with the secondary importing distributor defining the conditions for resale of the products within the primary importing distributor's territory.

In your scenario, the primary importing distributor would be selling to an importing distributor who is not within its geographical area. This would not be permitted under section 431 of the Liquor Code. However, if the secondary importing distributor is within the primary's territory, it may then purchase beverages from the primary and service licensees in an agreed upon secondary area.

In your second question, an importing distributor would like to purchase rights to products for a territory which is not geographically contiguous to its current territory. Section 431(d)(2) of the Liquor Code states that 'each franchise territory which is granted by a manufacturer shall be geographically contiguous.' [47 P.S. Section 4-431(d)(2)]. Furthermore, there may not be more than one agreement for each brand of malt beverages in any one territory. The Board has interpreted this provision requiring contiguous territories to mean, for each brand, a designated territory of an importing distributor granted by the manufacturer must be connected and may not be separated by other territories for the specific brand. Because many manufacturers have a multitude of different brands and nothing requires them to have one territorial agreement for all their brands, each brand must be considered separately for purposes of determining whether the importing distributor's territory is contiguous with regard to that specific brand.

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. 99-412