

November 20, 2017

Kelly Jones
VIA E-MAIL

RE: Alcohol Slushie Machine

Dear Ms. Jones:

ISSUE: This office is in receipt of your e-mail dated July 20, 2017, wherein you indicate that you are a holder of a distributor (“D”) license and that you just started selling malt or brewed beverage “slushies” in sealed containers to go. It is assumed for the purpose of this response that the “sealed container” you are referring to is a growler. You ask how often the slushie machine must be cleaned.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Little’s Auto Sales, Inc. holds Distributor License No. D-3653 (LID 31265) for the premises located at 4374 Forge Road, Nottingham, Pennsylvania.

OPINION: By way of background, Act 166 of 2016 (“Act 166”) amended the Liquor Code to allow distributors and importing distributors to sell malt or brewed beverages in any package configuration to a non-licensee for off-premises consumption.¹ 47 P.S. §§ 1-102, 4-431(b). These sales do not have to be in the manufacturer’s original package configuration and can be sold in refillable growlers. Id. Section 102 of the Liquor Code defines a growler as a “refillable container for malt or brewed beverages that can be resealed.” 47 P.S. § 1-102. Thus, if your container meets the above definition, it would be permissible under the Liquor Code.

Additionally, it is unclear how you are preparing the slushies, but please be advised that it is unlawful for any person to fortify, adulterate, contaminate, or in any wise to change the character or purity of the malt or brewed beverages from that as originally marketed by the manufacturer at the place of manufacture. 47 P.S. § 4-492(17). While this action would not prohibit a retail license holder to prepare a mixed drink at the specific request of a consumer for the consumer’s consumption on-premises, you are not authorized to sell for on-premises consumption. Therefore, you cannot mix any substance, including ice, with the malt or brewed beverage you are selling for off-premises consumption.

¹ While the Legislature only used the term “distributor” when amending section 431(b), in conferring with the legislative staffers, it was the intent of the Legislature to have the provision apply to both distributors and importing distributors. This is consistent with how the term “distributor” is used in sections 471.1(g) and 472(d)(3) of the Liquor Code.

In regard to your specific question, section 5.51(a) of the PLCB's Regulations imposes a cleaning requirement on licensees using a malt or brewed beverage dispensing system in the licensed premises. 40 Pa. Code § 5.51(a). The cleaning method used must clean the entire system with a chemical cleaning solution or other cleaning method approved by the PLCB. Faucets, dispensing lines, valves, joints, couplers, hose fittings, washers, o-rings, empty beer detectors, and draft foam control units shall be cleaned once every seven days. 40 Pa. Code § 5.51(c)(1). If you have an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing lines, you should follow the cleaning frequently and cleaning method guidelines of the system's manufacturer. 40 Pa. Code § 5.51(c)(2).

Regardless of the method of cleaning used, section 5.52 of the PLCB's Regulations requires that licensees keep cleaning records, consisting of the date cleaned, the name of the person by whom the equipment was cleaned, and the method utilized. These records must be kept on file for inspection by the PLCB. 40 Pa. Code § 5.52.

If you have any additional questions or concerns regarding this matter, the Liquor Code, or the PLCB's Regulations, please do not hesitate to again contact this office.

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.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 17-449