



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1998

Mr. Doyne Bailey  
Administrator  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

Letter Opinion No. 98-032

Re: Whether the Alcoholic Beverage Code permits two manufacturer's licensees to alternate control over shared premises (RQ-1036)

Dear Mr. Bailey:

You ask whether the Alcoholic Beverage Code permits two manufacturer's licensees to alternate control over shared premises. Because the Alcoholic Beverage Code does not permit a license to be issued for premises subject to another license, we conclude that such an arrangement is not permitted.

Chapter 61 of the Alcoholic Beverage Code contains provisions applicable to licenses generally, including manufacturer's licenses.<sup>1</sup> Chapter 62 contains provisions governing manufacturer's licenses more specifically. A manufacturer's license authorizes the holder to "manufacture or brew beer and distribute and sell it in this state" to certain persons, to dispense beer for consumption on the premises, and to bottle beer for resale in this state regardless of its place of manufacture. Alco. Bev. Code § 62.01. A license is not assignable. *Id.* § 61.04. A person licensed as a manufacturer may use or display a license or exercise a privilege granted by the license only at the licensed premises. *Id.* § 61.06.

License applicants are required to designate premises pursuant to section 11.49. *See id.* § 61.51 ("Premises" is defined in Section 11.49 of this code. The designating of licensed premises by license applicants is also covered by that section."). Section 11.49 defines "premises" as "the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person." *Id.* § 11.49(a). It also provides that an applicant, "[s]ubject to the approval of the commission or the administrator, . . . may designate a portion of the grounds, buildings, vehicles, and appurtenances to be excluded from the licensed premises." *Id.* § 11.49(b)(1).

Significantly, section 61.41 provides that "[n]o license may be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license

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<sup>1</sup>*See* Alco. Bev. Code § 61.01 ("No person may manufacture or brew beer . . . without having first obtained an appropriate license or permit as provided in this code.")

has shown to the satisfaction of the commission that he will no longer exercise any privilege granted by the existing license at that location.” The remainder of section 61.41 provides as follows:

If the holder of the existing license desires to transfer the license to another location, he may apply for a transfer of location in accordance with this code. If the holder of the existing license has made a declaration required by the commission that he will no longer use the license, he may not manufacture or sell beer or possess it for the purpose of sale until the license has been reinstated. The holder may apply to the county judge for the reinstatement of his license in the same manner and according to the same procedure as in the case of an original license application. The county judge or the commission or administrator may deny reinstatement of the license for any cause for which an original license application may be denied.

These provisions suggest that a licensee demonstrates that “he will no longer exercise any privilege granted by the existing license at that location” either by applying for a transfer of location or by declaring he will no longer use the license. In either case, the licensee relinquishes completely any privilege granted by the license at the existing location.

You present the following scenario: Company A owns and operates a beer manufacturing facility and has designated the entire facility as under its control for purposes of section 11.49(b). Company B seeks a manufacturer’s license and proposes to designate a portion of Company A’s premises as its exclusive premises. In addition, the two companies would alternate control of certain areas:

Company B would provide the Alcoholic Beverage Commission with a schedule of its intended use of that portion of Company A’s premises that contained the actual production line. For example, this schedule might say that the designated portion of Company A’s premises will become the licensed premises of Company B from midnight, January 1 until midnight January 2. During that period of time, the described area would be under the exclusive management and control of Company B. At midnight on January 2, the area would revert to the control of Company A.

Based on the statutes reviewed above, we believe the Alcoholic Beverage Code does not permit licensees to alternate control over licensed premises. As discussed above, section 11.49(b) requires an applicant for a manufacturer’s license to designate any portion of his premises which he wishes to exclude from the scope of his license. Premises not excluded are subject to the license. Section 61.41 provides that a second license may not be issued for premises “for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that he will no longer exercise *any* privilege granted by the existing license at that location.” (Emphasis added.) These statutes contemplate that premises will be exclusive to one license at all times the license is in effect. Neither statute authorizes premises to pass from one licensee to another within

the term of the license. Indeed, the section 61.41 requirement that the existing licensee show “that he will no longer exercise *any* privilege granted by the existing license at that location” before a license may be issued to a second licensee for the same premises effectively prohibits such an arrangement.

**S U M M A R Y**

Because the Alcoholic Beverage Code does not permit a manufacturer’s license to be issued for premises subject to another license, *see* Alco. Bev. Code §§ 11.49(b)(1), 61.41, two manufacturer’s licensees may not alternate control over licensed premises.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with a prominent flourish at the end.

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee