



TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Doyle Bailey, Administrator

November 19, 1997

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The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711

FILE # ML-39928-97 Opinion Committee
I.D. # 39928

ATTENTION: Opinions Committee

RQ-1036

Dear General Morales:

This agency has received a request for a license to be issued under conditions that raise novel questions of law under the Alcoholic Beverage Code. Accordingly, please consider this letter a request for your opinion under the authority of §402.042(b)(2) of the Texas Government Code.

Here are the facts as we understand them: Company A owns and operates a beer manufacturing facility in this state and is licensed by this agency to do so. The entire facility constitutes the "licensed premises" of Company A pursuant to the definition contained in §11.49(a) of the Alcoholic Beverage Code.

Company B seeks a license to manufacture beer and proposes to exercise the rights granted under that license on the premises of Company A. Company B proposes to designate a portion of the premises currently licensed to Company A as the exclusive licensed premises of Company B. These premises would be used by Company B for office space, storage of product and similar uses.

Additionally, 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.

We believe that three provisions of our code apply to this proposal. Section 109.53 of the Alcoholic Beverage Code provides in part that:

"[e]very permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee or business of the permittee to persons other than the permittee shall be unlawful."

Section 61.41 of the code states that:

"[n]o license shall be issued for a premises, location, or place of business 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."

Finally, Section 11.49(b)(1) of the code provides in part that:

"[s]ubject to the approval of the commission or administrator...an applicant for a permit or license may designate a portion of the grounds, buildings, vehicles and appurtenances to be excluded from the licensed premises."

Our question is whether or not Company A and B may alternate control of a portion of Company A's manufacturing facility consistently with the above cited provisions or any other portion of the Alcoholic Beverage Code you may consider relevant.

My staff will stand ready to render any assistance you may need in answering our question. Our General Counsel Lou Bright will coordinate our efforts in this regard.

Thank you for your assistance in this matter.

Sincerely,



Doyne Bailey

DB:cl

cc: The Honorable Tommy Merritt