

Matthew G. Bevin  
Governor

David A. Dickerson  
Secretary

Christine Trout  
Commissioner



PUBLIC PROTECTION CABINET  
1003 Twilight Trail  
Frankfort, Kentucky 40601  
502-564-4850 (o)  
502-564-7479 (f)

**ADVISORY OPINION REQUEST 2017-001**

October 26, 2017

*via electronic mail*

Ms. Stephanie Stumbo  
Goss Samford  
2365 Harrodsburg Road  
Suite B-325  
Lexington, Kentucky 40504

**RE: Shipping and/or Delivery - Microbrewers**

Dear Ms. Stumbo:

Thank you for your August 22, 2017 correspondence on behalf of the Kentucky Guild of Brewers requesting guidance on the scope of a microbrewer's ability to directly deliver and/or ship its product to retail consumers:

“Commissioner Trout and Members of the Board, I am emailing on behalf of our client, the Kentucky Guild of Brewers. The Guild’s membership is specifically requesting clarification and opinion by the Board/Department in regards to the delivery of malt beverages. Below please find the Guild’s questions: First, as you are aware microbreweries hold regular retail licenses. Our question is for microbrewers holding the proper non quota malt beverage package retail licenses- are we permitted to deliver malt beverages (beer) directly to consumers like all other retailers holding the same retail license? Second question is, if yes, does delivery include delivery by shipping methods? Specifically, is shipping beer directly to our end consumer through use of a proper license commercial carrier holding the appropriate transporter license like FedEx, UPS other common carrier also permissible? We ask the previous questions understanding that the sale must be handled directly by us (the licensed microbrewery holding the appropriate retail license) and that the point of sale must occur at our licensed brewery premises whether a computer sale to consumer or the consumer is in person on our premises. Your consideration of this opinion request is greatly appreciated. We look forward to receiving the Board’s response. Thank you.”

In response, the Kentucky Department of Alcoholic Beverage Control (“ABC”) offers the following opinion. To sell malt beverages by the package, a microbrewery must hold a nonquota retail malt beverage package license under KRS 243.280. See KRS 243.157(3)(c)1; KRS 243.020(1). In *Roppel v. Shearer*, 321 S.W.2d 36 (Ky. 1959), the Kentucky Supreme Court recognized that licensees holding retail malt beverage licenses under KRS 243.280 had the right to deliver malt beverages to consumers, if purchased by telephone or mail order “from the licensed premises.” Notably, *Roppel* was decided in 1959 – a time when telephone and mail were the only available methods to consumers for placing orders. Technology now provides a more convenient way for consumers to place sales orders directly to businesses: the internet. Internet orders are also permissible under the *Roppel* analysis as long as orders are taken at the retail premises. The Department’s recent interpretation requiring credit card or debit card payment at time of order further ensures that the sale occurs at the licensed premises as *Roppel* requires.

Accordingly, if a microbrewer holds a nonquota retail malt beverage package license, it may deliver malt beverages purchased from its licensed premises to consumers.

The next question raised is how the microbrewer may deliver the malt beverage package to the consumer. In recent guidance, the Department interpreted KRS 243.200(1) to allow an independent contractor company to obtain a transporter’s license and offer delivery services to multiple local retailers for a fee under service contracts. See Attachment 2. In reaching this conclusion, the Department relied on the language of KRS 243.200(1) which provides that the license holder may “transport alcoholic beverages to or from the licensed premises of **any licensee** under this chapter if both the consignor and consignee in each case are authorized by the law of the states of **their residence** to sell, purchase, ship, or receive the alcoholic beverages.” Since consumers are allowed to receive alcoholic beverages at their residence, a local entity holding a transporter’s license can deliver alcoholic beverages on behalf of a retailer.

Some businesses often fulfill orders by use of common carriers like United Parcel Service, Federal Express, or the United States Postal Service. Although common carriers generally are thought to be in the “shipping” business, KRS Chapters 241-244 do not define the terms “shipping” and “delivery,” so the Department must use their common, ordinary or popular meaning.

The common and ordinary meanings of “delivery” and “shipping” are essentially synonymous when a third party independent contractor (including common carriers) performs those services for a licensed retailer. A licensed common carrier performs the exact same service as a local delivery company: delivery of alcoholic beverages to a consumer on behalf of a retailer. Furthermore, a common carrier is the primary business type authorized to hold a transporter’s license that evidences a legislative intent that shipping companies would deliver alcoholic beverages on behalf of other licensees. See KRS 243.200(1).

For these reasons, the Department interprets Kentucky law to permit a licensee holding a nonquota retail malt beverage license to use a common carrier with a transporter’s license to ship and deliver malt beverages to a Kentucky consumer (in wet territory) who purchases malt beverages over the phone or internet with a credit card or debit card. Kentucky has no jurisdiction outside its geographic borders. Any privilege a licensee seeks regarding its ability to ship or deliver malt

beverages packages to out-of-state consumers should be directed to the governing regulatory body in the respective state it seeks to operate.

The Department appreciates the contribution microbrewers make to the economic success and growth of a new vibrant industry in Kentucky. Please feel free to contact us with any additional questions.

Sincerely,

Department of Alcoholic Beverage Control



---

Christine Trout  
Commissioner



---

Trina Summers  
Distilled Spirits Administrator



---

Carol Beth Martin  
Malt Beverage Administrator