



STATE OF INDIANA
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Advisory Opinion 23-02: Craft Manufacturers & Prohibited Interests

I. Issue or Question Presented

The following question was posed to the Indiana Alcohol and Tobacco Commission (“Commission”):

Is it allowable to hold a farm winery permit, small brewery permit, and an artisan distillers permit?

The purpose of this advisory opinion is to provide guidance regarding the permissibility of concurrently holding, possessing, and/or having an interest in a farm winery permit, small brewer permit, and artisan distiller permit under Title 7.1 of the Indiana Code.

II. Background

Following the repeal of Prohibition, the Indiana legislature—like most other states—established a three-tier system to regulate the production, distribution, and sale of alcohol. Under the three-tier system, manufacturers (first tier) sell product to wholesalers (second tier), who may only sell product to retailers (third tier), who sell directly to consumers for on-premises or off-premises consumption. In Indiana, there are separate permits for beer, wine, and liquor at each level of the three-tier system.

At the manufacturing level, Indiana distinguishes between large manufacturers and small manufacturers (often referred to as craft manufacturers) who produce alcohol on a smaller scale. Brewer permits are classified into two different types based on the amount of beer that the brewer produces. Brewers that manufacture less than ninety thousand (90,000) barrels per calendar year for sale or distribution in Indiana must obtain a small brewer permit. Similarly, in order to be eligible for a farm winery permit, an applicant or permit holder cannot sell more than one million (1,000,000) gallons of wine in Indiana annually. Like small brewers, artisan distillers are also subject to a production limitation and may not produce more than twenty thousand (20,000) gallons of liquor in a calendar year¹.

Each craft manufacturer permit has its own eligibility requirements, privileges, and restrictions. The laws governing restrictions between the different types of permits are referred to as “prohibited interest” statutes. For purposes of this advisory opinion, we will focus on the prohibited interest statutes applicable to craft manufacturers of alcoholic beverages.

III. Relevant Statutes & Rules

As a general rule, no manufacturer or wholesaler may have an interest in a permit for both beer and liquor. Under IC 7.1-5-9-3(b), a brewer that manufactures, in aggregate, more than ninety thousand (90,000) barrels of beer in a calendar year for sale or distribution within Indiana may not have an interest in a liquor permit of any type. Conversely, under IC 7.1-5-9-6, the holder of a liquor wholesaler permit may not have an interest in a beer permit of any type.

However, there is an exception to this general rule for small manufacturers. The restriction set forth in IC 7.1-5-9-3(b) only applies to large brewers, not small brewers. Similarly, as set forth in IC 7.1-3-27-5, an

¹ Liquor that is produced by an artisan distiller and sold through a wholesaler is not subject to the gallonage limit.

applicant seeking to obtain an artisan distiller permit must hold a farm winery permit, small brewer's permit, or distiller's permit (i.e., qualifying permit) for at least six (6) months in order to qualify for an artisan distiller permit, and the same individuals must directly or indirectly own and control more than fifty percent (50%) of the entity that holds the qualifying permit and the artisan distiller's permit. Along the same lines, IC 7.1-3-27-6 explicitly authorizes the holder of an artisan distiller's permit to hold a farm winery permit, small brewer permit, and a distiller's permit. As such, it is not forbidden under the prohibited interest statutes to hold or have an interest in an artisan distiller permit, a small brewer permit, and a farm winery permit.

Another general rule of the three-tier system is that no one holding a permit in one tier may hold an interest in a permit in another tier. For example, under IC 7.1-5-9-2, it is unlawful for the holder of a brewer's permit to hold or to have an interest in a business that holds a beer wholesaler's permit and it is unlawful for the holder of a farm winery permit to hold or to have an interest in a business that holds wine wholesalers permit. Additionally, under IC 7.1-5-9-10(a), it is unlawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a manufacturer or wholesaler permit of any type.

However, the rule against crossing tiers also has an exception for small manufacturers in order to increase competition, boost diversity in the marketplace, and improve access to smaller, independent brands and their alcohol products. For example, craft manufacturers are explicitly authorized to own and operate retail restaurants in order to sell their products directly to consumers. Conversely, under IC 7.1-5-9-10(b), retail permittees are permitted to hold, acquire, own or possess an interest in a small brewer's permit, artisan distiller's permit, farm winery permit.

To be sure, craft manufacturers are still prohibited from holding or having an interest in a wholesaler permit, thus ensuring the integrity of the three-tier system. Under IC 7.1-5-9-8, the holder of an artisan distiller's permit, distiller's permit, or a rectifier's permit may not own, acquire, or possess a permit to sell liquor at wholesale. Under IC 7.1-5-9-2(a), it is unlawful for the holder of a brewer's permit to hold, acquire, possess, own, control, or have an interest in, an entity that holds a beer wholesaler permit. Under IC 7.1-5-9-2(b), it is unlawful for the holder of a vintner's permit to hold, acquire, possess, own, control, or have an interest in, an entity holding a wine wholesaler's permit.

IV. Analysis & Conclusion

In this case, a husband and wife jointly hold a farm winery permit and small brewer permit under separate corporate entities and have held them for years. The husband and wife have applied for an artisan distiller permit under a newly formed corporation that is also jointly held by the parties. As such, they satisfy the requirement under IC 7.1-3-27-5 that requires the applicant of an artisan distiller permit to hold a qualifying permit (farm winery permit, small brewer permit, or distiller permit) for at least six (6) months. They also satisfy the requirement that the same persons directly or indirectly own and control more than fifty percent (50%) of the entity that holds the qualifying permit and the artisan distiller's permit. Given these facts, nothing prohibits them from obtaining and holding an artisan distiller's permit if they meet all other qualifications.

Furthermore, since IC 7.1-3-27-6 uses the term permit "holder" rather than referencing "an interest" in a particular permit, it follows that separate corporations may hold all three types of craft manufacturer permits, even if those corporations are owned by common individuals.

In conclusion, it is permissible to hold or have an ownership interest in an artisan distiller permit, small brewer permit, and farm winery permit under Indiana's prohibited interest statutes, so long as the permit holder and individual owners possess all the necessary qualifications to hold each permit.

DISCLAIMER: Opinions expressed in this advisory opinion are fact-sensitive and based on the 2023 Indiana Code. Advisory opinions are issued to provide information that is consistent with the relevant statutes, rules and court decisions related to a particular topic or question. Any information that is not consistent with the laws, rules, or regulations is not binding on either the Commission or the public.