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June 19, 2018

**VIA EMAIL AND HAND DELIVERY**

Chairman Andrew J. Deloney  
Commissioner Teri L. Quimby  
Commissioner Dennis Olshove  
Michigan Liquor Control Commission  
Constitution Hall  
525 W. Allegan  
Lansing, MI 48933

**RECEIVED**

JUN 19 2018

MI LIQUOR CONTROL COMMISSION  
OFFICE OF THE CHAIRPERSON

RE: New Holland Brewing – Request for Declaratory Ruling

Dear Chairman Deloney and Commissioners Quimby and Olshove:

This office represents the Michigan Beer & Wine Wholesalers Association (“MB&WWA”). This letter is submitted in connection with the request for declaratory ruling dated May 23, 2018 from New Holland Brewing (“New Holland”). MB&WWA’s members are an integral part of Michigan’s alcoholic beverage distribution system. As such, MB&WWA and its members have an interest in the interpretation of the Michigan Liquor Control Code since it is within that statutory framework that MB&WWA’s members conduct business.

**Summary of Position**

The Liquor Control Code is clear that all mixed spirit drinks are to be produced solely by mixed spirit drink manufacturers and sold only to wholesalers. The Commission has been clear that mixed spirit drinks may not be sold at retail by a mixed spirit drink manufacturer and there is no authority under the Liquor Control Code to sell such products at retail through the holder of a small distiller license. As a result, the Commission should either deny the request for issuance of a declaratory ruling or issue an order denying New Holland’s request.

**Background**

The Michigan Liquor Control Commission (“Commission”) received a request for a declaratory ruling from New Holland dated May 23, 2018, which is date-stamped as

received by the Commission on May 30, 2018 ("Request"). New Holland states in its Request that it has two Small Distiller Licenses and one Mixed Spirit Drink License. New Holland cites MCL 436.1534 in support of its Request to allow a mixed spirit drink manufacturer to sell its products at retail under the authority of its small distiller licenses. This would allow retail sales of mixed spirit drink directly to consumers for on premise and off premise consumption at an establishment operated by a small distiller.

### Analysis

Following the adoption of the Twenty-First Amendment in 1933, the Michigan Constitution was amended to permit the creation of a Liquor Control Commission. Const 1963, Art. 4, § 40 provides, in pertinent part:

(t)he legislature may by law establish a liquor control commission which, **subject to statutory limitations**, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. The legislature may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same. (Emphasis added).

The Constitutional grant of power to the Liquor Control Commission over liquor traffic in this state is expressly subject to statutory limitations, including the requirement that the Commission adopt rules and regulations in exercising its discretion in regard to licensing standards. *Mallchok v Liquor Control Com*, 72 Mich App 341 (1976).

New Holland holds separate, distinct licenses to operate as a small distiller and a mixed spirit drink manufacturer. Each manufacturer is required to have a separate license and each license confers different specific rights under the Liquor Control Code.

The definition of mixed spirit drink manufacturer in MCL 436.1109(5) provides that a distinct license is necessary to manufacture these products. More specifically, a "mixed spirit drink manufacturer means any person licensed under this act to manufacture mixed spirit drink in this state and to sell mixed spirit drink to a wholesaler." (Emphasis Added). MCL 436.1525(1)(u) identifies the license required to manufacture mixed spirit drinks as well as the required fee that must be paid.

"Mixed spirit drink" is defined in MCL 436.1109(5) as:

[A] drink produced and packaged or sold by a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain 1 or more of the following:

- (a) Water.
- (b) Fruit juices.
- (c) Fruit adjuncts.
- (d) Sugar.
- (e) Carbon dioxide.
- (f) Preservatives.

The definition of a mixed spirit drink clearly provides that only a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink may manufacture this product. A small distiller is not permitted to do so.

A small distiller is defined in MCL 436.1111(9) with reference to the issuance of a separate license in MCL 436.1525(1)(z). A "small distiller" is defined in MCL 436.1111(9) as "a manufacturer of spirits annually manufacturing in Michigan not exceeding 60,000 gallons of spirits, of all brands combined."

As admitted by New Holland in its Request, MCL 436.1534 (titled "Small distiller license") allows a "small distiller" to sell at retail from its licensed premises only "brands it manufactures" on the licensed premises for consumption on or off the licensed premises. Since the Liquor Control Code does not permit a small distiller to manufacture mixed spirit drinks, MCL 436.1534 does not permit the holder of a small distiller license to sell mixed spirit drinks at retail.

Nowhere in MCL 436.1534 does it state that a mixed spirit drink manufacturer may sell at retail or that a small distiller may sell mixed spirit drinks on behalf of a mixed spirit drink manufacturer. To the contrary, the definition of a mixed spirit drinks manufacturer requires that it sell its products to a wholesaler and then the wholesaler may sell those products to a retailer. As a result, it is clear that MCL 436.1534 does not apply to mixed spirit drinks. There is simply no authority in the Liquor Control Code or the Administrative Rules that allows a mixed spirit drink manufacturer to sell at retail or use a small distiller license to do so.

New Holland is essentially asking the Commission to blur the line between a "small distiller" and a "mixed spirit drink manufacturer." It claims that a search of the Liquor Control Code and Administrative Rules does not disclose a prohibition against serving mixed spirit drinks at the retail outlets licensed by the Commission for the sale of distilled spirit products. However, that assertion is incorrect and ignores the underlying statutory scheme and the mandate of MCL 436.1201(1), which provides that the manufacture and sale of alcoholic beverage is "subject to the terms, conditions, limitations, and restrictions contained in this act, and only as provided for in this act." (Emphasis Added).

New Holland requests an interpretation of the Liquor Control Code that is contrary to its unambiguous meaning. To allow New Holland to operate its business in this manner would be to ignore the applicable provisions of the Liquor Control Code enacted by the Michigan Legislature.

There is nothing unclear or ambiguous about the statutory language. The Legislative intent and mandate needs no interpretation. The plain language of the Liquor Control Code must be followed. See *Brown v Mayor*, 478 Mich. 589 (2007) (The first step of statutory construction is to review the language of the statute, and if the statutory language is unambiguous, the legislature is presumed to have intended the meaning expressed in the statute).

Finally, as noted by New Holland, "certain postings on the Liquor Control Commission website carry instructions" that a mixed spirit drink manufacturer may not sell directly to retailers or consumers. The Commission's interpretation of the Liquor Control Code as to the rights of mixed spirit drink manufacturers is correct and consistent with legislative authority and historical precedent. As a result, there is no need to issue a declaratory ruling since the law is clear on this matter.

**Conclusion**

For the reasons stated above, the Commission should deny the request for a declaratory ruling and, if a declaratory ruling is issued, it should reject New Holland's position as incorrect.

Respectfully submitted,

**Willingham & Côté, P.C.**



Scott A. Breen

Cc: Mr. Spencer Nevins  
Mr. Donald McGehee, Esq.