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ALCOHOL AND TOBACCO COMMISSION

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## **Advisory Opinion 22-02: Wholesaler Offering Additional Services**

### **I. Background**

The following question was posed to the Indiana Alcohol and Tobacco Commission:

1. Does an Indiana licensed wholesaler permittee have the authority to offer services (such as stocking shelves) to one Indiana licensed permittee but refuse to extend those same services to another Indiana licensed permittee?

### **II. Statutes and Rules**

905 IAC 1-5.2-1 allows for a primary source of supply or wholesaler to furnish a retailer or dealer supplies and services as outlined in the same rule. However, the rule goes on to state that the furnishing of these supplies and services must be done “on a nondiscriminatory basis to retailers and dealers.”

Indiana Code 7.1-5-5-7 prohibits discrimination in sales between permittees “by granting a price, discount, allowance, or service change which is not available to all purchasers at the same time.”

905 IAC 1-5.2-15 discusses product management specifically (e.g. stocking of shelves, rotation of inventory). The section states that a primary source of supply or wholesaler may, “on a non-discriminatory basis”, provide product management services. Subsection (f) states:

As used in this section, “nondiscriminatory” means that the services a primary source of supply or wholesaler offers to holders of dealer permits are made available to all similarly situated dealers without regard to the type of dealer permit held, and that the services a primary source of supply or wholesaler offers to holders of retailer permits are made available to all similarly situated retailers without regard to the type of retailer permit held.

### **III. Analysis & Conclusion**

In light of the above, it is the position of the Alcohol and Tobacco Commission that a primary source of supply or wholesaler is not required to furnish additional supplies or services. However, if a wholesaler does offer to furnish “services” to Indiana licensed permittees, that wholesaler must make those same services available to all similarly situated permittees.

**DISCLAIMER:** Opinions expressed in this advisory opinion are fact-sensitive and based on the 2021 Indiana Code.