

October 23, 2000

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Mr. Vic Petaccio  
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**RE: Various Questions Concerning the Liquor Code and the Board's Regulations**

Dear Mr. Petaccio:

**ISSUE:** This is in response to your letter received in the summer of 2000, in which you ask the following questions:

1. How is the policy of allowing contests with cash prizes in restaurant licensed establishments progressing in Pennsylvania?
2. Can a restaurant licensee offer a daily drink special for more than one single alcoholic beverage per day?
3. Are there any standards by which a restaurant licensee can be guided in the area of frequenting by underage persons? Can you give any advice to guide a restaurant licensee which hosts sports teams consisting of minors that are supervised by adults?
4. How can a restaurant licensee best protect itself against charges of wrongly serving underage persons who gain admittance to the licensed establishment by the presentation of false identification? How can a restaurant licensee follow Pennsylvania law in the area of charges of serving alcohol to visibly intoxicated persons?
5. In cases where a person may appear to be twenty-one years of age or older, may a restaurant licensee deny service of alcoholic beverages when the person cannot present acceptable identification?
6. Is there any possibility that the rules requiring payment on delivery for beer may be amended to provide for payment up to two weeks or four weeks after delivery as is the policy in New Jersey?
7. Is it ever lawful for a restaurant licensee to give alcoholic beverages as pay for services it has received (i.e., roof repairs, plumbing repairs, etc.)?
8. Can a restaurant licensee deliver six-packs of beer as part of a food order?
9. Is there any violation of Pennsylvania law when a customer is served at 8:30 a.m. but the restaurant licensee's opening time is not until 9:00 a.m.?
10. Can a restaurant licensee sell food between the hours of 2:00 a.m. and 2:30 a.m. provided that all customers vacate the licensed premises by 2:30 a.m.?
11. Although the license renewal requirement of a \$2,000.00 insurance bond has been eliminated, can you advise on why this insurance was originally required?
12. Can a restaurant licensee be a Pennsylvania Lottery location selling lottery tickets?
13. Is it correct that all license renewal fees paid by a restaurant licensee are eventually transferred to the accounts of the local municipality where the licensee is assigned?
14. Can a restaurant licensee lawfully use a company vehicle to pick up beer from a distributor at times when the licensee runs short of beer supplies?
15. Is it lawful for a customer to purchase a six-pack of beer prior to 2:00 a.m., but take it off the licensed site after 2:00 a.m. and prior to 2:30 a.m.?
16. Is there any area of Pennsylvania law governing restaurant licenses where problem trends seem to keep recurring and where some education for the restaurant licensee may help with compliance?

**OPINION:**

**1. How is the policy of allowing contests with cash prizes in restaurant licensed establishments progressing in Pennsylvania?**

Sections 5.30 and 5.32(e)(5) of the Board's regulations [40 Pa. Code Sections 5.30; 5.32(e)(5)] permit a restaurant licensee to conduct self-sponsored contests on its licensed premises. Self-sponsored means paid for and carried out by the restaurant licensee. Among other applicable provisions, a contest may not involve the following:

- There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or contest participants.
- There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.
- There may not be a contest that involves the consumption of alcoholic beverages by a contest participant.
- The price of a ticket or evidence of admission to a contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package as a part of a 'catered event' as defined by the Liquor Code and the Board's regulations.
- The total value of all prizes for any given contest may not exceed \$500.00. The total value of all prizes awarded in any seven day period may not exceed \$5,000.00.
- The Licensee shall maintain on the licensed premises for two years, from the date of the event, an itemized list of all prizes for each contest indicating each prize, its value and the name and address of the recipient.

As long as the prize meets the above-listed guidelines, a cash prize is permitted.

**2. Can a restaurant licensee offer a daily drink special for more than one single alcoholic beverage per day?**

Section 13.102 of the Board's regulations permits certain discount pricing practices by retail licensees. Such licensees may discount the price of alcoholic beverages for a two-hour 'happy hour' if it ends by midnight. Retail licensees may also serve an unlimited amount of alcoholic beverages for a fixed price for catered events, which have been arranged at least twenty-four hours in advance. [40 Pa. Code Section 13.102].

Furthermore, section 13.102(b)(3) of the Board's regulations states that all licensees may offer one type of alcoholic beverage or drink per day at a reduced price so long as the discount ends by 12:00 midnight. [40 Pa. Code Section 13.102(b)(3)].

**3. Are there any standards by which a restaurant licensee can be guided in the area of frequenting by underage persons? Can you give any advice to guide a restaurant licensee which hosts sports teams consisting of minors that are supervised by adults?**

Section 493(14) of the Liquor Code prohibits individuals under the age of twenty-one years from frequenting licensed premises. [47 P.S. Section 4-493(14)]. The Liquor Code, however, provides for exceptions to the general prohibition. Minors may frequent licensed premises if accompanied by a parent, guardian or under proper supervision. [47 P.S. Section 4-493(14)]. In addition, licensees may allow minors on the premises without parents, guardians or proper supervision if their sales of food and non-alcoholic beverages are equal to seventy percent or more of the combined sales of both food and alcoholic beverages. [47 P.S. Section 4-493(14)]. Unless the establishment meets the aforementioned sales volume criteria or the minor in question is accompanied by a parent, guardian or under proper supervision, the licensee would be prohibited from allowing minors to enter the licensed establishment. In fact, allowing a minor on licensed premises when the above criteria are not met exposes the licensee to significant penalties for violation of the Liquor Code.

The Liquor Code defines 'proper supervision' as follows:

The presence, on that portion of the licensed premises where a minor or minors are present, of one person twenty-five years of age or older for every fifty minors or part thereof who is directly responsible for the care and conduct of such minor or minors while on the licensed premises and in such proximity that the minor or minors are constantly within his sight or hearing. Presence of a licensee or any employe or security officer of the licensee

shall not constitute proper supervision. [47 P.S. Section 4-493(14)].

In addition, while a licensee who meets the seventy percent sales volume criteria may allow minors on the licensed premises without parents, guardians or proper supervision, alcoholic beverages may not be served at the table or booth at which the minor is seated (unless the minor is under proper supervision) and only table service of alcoholic beverages or take out service of beer shall be permitted in the room where the minor is located. [47 P.S. Section 4-493(14)].

**4. How can a restaurant licensee best protect itself against charges of wrongly serving underage persons who gain admittance to the licensed establishment by the presentation of false identification? How can a restaurant licensee follow Pennsylvania law in the area of charges of serving alcohol to visibly intoxicated persons?**

Section 493(1) of the Liquor Code states that it is unlawful for any person to furnish malt or brewed beverages to a visibly intoxicated or insane person, a minor or a habitual drunkard. [47 P.S. Section 4-493(1)].

Section 495(a) of the Liquor Code permits the following to be used as identification for the purposes of buying alcoholic beverages: a Pennsylvania photo driver's license or identification card; an out of state photo driver's license or identification card; an armed forces identification card; a valid passport and a photo travel visa from a foreign country. [47 P.S. Section 4-495(a)].

Section 495 of the Liquor Code states that the identification card shall be presented upon request of any licensee or employe to determine whether or not a person is twenty-one years of age or over, when such person requests alcoholic beverages at a licensed establishment. In addition to the presentation of such identification card, the licensee may require the person whose age may be in question to fill in and sign a form containing language approved by the Board, i.e., a declaration of age card. Any such signed form in the possession of a licensee may be offered as a defense in all civil and criminal prosecutions for serving a minor, and no penalty shall be imposed if the administrative law judge or the courts are satisfied that the licensee acted in good faith. Section 495 also states that a photograph or photocopy or other visual or video presentation of the identification card may be offered as a defense in all civil and criminal prosecutions for serving a minor, and no penalty shall be imposed if the administrative law judge or the courts are satisfied that the licensee or employee acted in good faith. [47 P.S. Section 495(b)-(f)]. Please note that a licensee can always escape liability for service to a minor if they can convince the tribunal that they acted in good faith.

For more information on what you can do to protect yourself and your business, you may wish to take part in the Responsible Alcohol Management Program ("RAMP"). RAMP was created by the Board to help licensees and their employees serve alcohol responsibly. RAMP offers practical advice for licensees operating restaurants, hotels, clubs, distributors, and permittees conducting special occasion events. Most importantly, RAMP is free to all licensees and permittees. RAMP explains how to:

- Detect signs of impairment and intoxication, and effectively cut off service to a customer who has had too much to drink.
- Identify underage individuals, and deter minors from coming into your establishment in the first place.
- Detect altered, counterfeit, and borrowed identification.

If you do decide to call a RAMP representative, he or she will make arrangements to train you and your staff at your premises or at another convenient location. The workshop will include video, lecture, a training manual, and other materials. Walter Lafty is the RAMP representative for eastern Pennsylvania and can be contacted at (610) 940-1216.

**5. In cases where a person may appear to be twenty-one years of age or older, may a restaurant licensee deny service of alcoholic beverages when the person cannot present acceptable identification?**

There is nothing in the Liquor Code that would prevent a licensee from denying service of alcoholic beverages to a person who appears to be twenty-one years of age or older who does not present acceptable identification. Care should be taken by the licensee, however, to not bar persons in such a manner that could be in violation of the Pennsylvania Human Relations Act or any federal discrimination laws, i.e. on the basis of race or gender.

**6. Is there any possibility that the rules requiring payment on delivery for beer may be amended to provide for payment up to two weeks or four weeks after delivery as is the policy in New Jersey?**

Generally, importing distributors and distributors may not make sales on credit to other licensed customers. [47 P.S. Section 4-493(2)]. However, the regulations permit distributors and importing distributors to accept debit card payments for instant electronic transfer funds, which is considered cash under the Liquor Code. [40 Pa. Code Section 9.95(c)]. Any amendment to change the prohibition against sales or credit would have to be made by the legislature.

**7. Is it ever lawful for a restaurant licensee to give alcoholic beverages as pay for services it has received (i.e. roof repairs, plumbing repairs, etc.)?**

Section 493(2) of the Liquor Code provides that it is unlawful for any licensee to sell or offer to sell any liquor or malt or brewed beverages except for cash or bank institution credit cards. As the type of bartering arrangement that you have described is not authorized credit as defined in the Liquor Code, this type of arrangement would be precluded. [47 P.S. Section 4-493(2)].

It should also be noted, that section 493(3) of the Liquor Code makes it unlawful for any licensee to sell or furnish malt or brewed beverages to any person on a pass book or store order, or to receive from any person any goods, wares, merchandise or other articles in exchange for liquor or malt or brewed beverages. [47 P.S. Section 4-493(3)].

**8. Can a restaurant licensee deliver six-packs of beer as part of a food order?**

Restaurant licensees may not be involved in the delivery of alcohol. The delivery of alcohol, regardless of whether food is delivered or not, could be considered a purchase off licensed premises. Restaurant licensees are prohibited from selling off the licensed premises; therefore, such sales are prohibited. Furthermore, a special license is required for delivery of alcohol for commercial purposes.

Those who have such licenses for transportation of alcohol may deliver alcohol; however, anyone with such a license is prohibited from also being a restaurant licensee.

**9. Is there any violation of Pennsylvania law when a customer is served at 8:30 a.m. but the restaurant licensee's opening time is not till 9:00 a.m.?**

The days and hours in which retail licensed establishments may sell alcoholic beverages is set by the legislature of the Commonwealth. As long as the licensee does not serve or sell alcohol on prohibited days or during prohibited hours, it may conduct its operation in the manner you indicated. Restaurant licensees may legally sell alcohol from 7:00 a.m. until 2:00 a.m. the next morning.

**10. Can a restaurant licensee sell food between the hours of 2:00 a.m. and 2:30 a.m., provided that all customers vacate the licensed premises by 2:30 a.m.?**

Section 499(b) of the Liquor Code [47 P.S. Section 4-499(b)] permits a retail licensee to remain open between 2:00 a.m. to 7:00 a.m. for the purpose of serving food on any day, but only if such licensee either possesses or is eligible to purchase a Sunday Sales permit and receives an extended hours food permit. Without an extended hours food permit, no sales, of food or alcohol may be made after 2:00 a.m.

**11. Although the license renewal requirement of a \$2,000.00 insurance bond has been eliminated, can you advise on why this insurance was originally required?**

Originally, when a licensee had his license revoked and had unpaid fines that he owed to the Board, the agency would use the insurance bond of the licensee to make good on any such debts.

**12. Can a restaurant licensee be a Pennsylvania Lottery location selling lottery tickets?**

According to section 3.52 of the Board's regulations, a licensee is not to operate or permit other persons to operate another business on the licensed premises. [40 Pa. Code Section 3.52(a)]. In addition, the licensed premises cannot have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board. [40 Pa. Code Section 3.52(b)]. Traditionally, the Board has addressed licensees' requests to operate another business on licensed premises on a case-by-case basis. Therefore, I would suggest that if a licensee is interested in selling Pennsylvania Lottery tickets, that licensee should write this office and request permission from the Board to do so. It should be noted that in the past, certain retail licensees have received approval from the Board to sell Pennsylvania Lottery tickets.

**13. Is it correct that all license renewal fees paid by a restaurant licensee are eventually transferred to the accounts of the local municipality where the licensee is assigned?**

Section 801(a)(1) of the Liquor Code states that license fees for hotel, restaurant and club liquor licenses go into a special fund known as the 'Liquor License Fund'. [47 P.S. Section 8-801(a)(1)]. Section 801(b) of the Liquor Code states that the monies in the Liquor License Fund shall be paid by the Board to the respective municipalities in which the licensed places are situated, in such amounts as represent the aggregate license fees collected from the license in such municipalities during the preceding period. [47 P.S. Sections 4-405(c); 8-805(b)].

**14. Can a restaurant licensee lawfully use a company vehicle to pick up beer from a distributor at times when the licensee runs short of its beer supplies?**

The Board requires that distributors deliver the beer supplies to licensees. Thus, a restaurant licensee cannot lawfully use a company vehicle to pick up beer from a distributor at times when the licensee runs short of its beer supplies.

**15. Is it lawful for a customer to purchase a six-pack of beer prior to 2:00 a.m., but take it off the licensed site after 2:00 a.m. and prior to 2:30 a.m.?**

Section 406(a)(2) of the Liquor Code states that hotel and restaurant liquor licensees may sell liquor and malt or brewed beverages only after 7:00 a.m. of any day until 2:00 a.m. of the following day. [47 P.S. Section 4-406(a)(2)]. Thus, all sales must be final prior to 2:00 a.m. Typically, for a sale to be final, the money must have been exchanged for the alcohol and, in most cases, the customer must have possession of that alcohol. If the sale is final prior to 2:00 a.m., nothing prohibits a customer from remaining on the licensed premises with the alcohol that he/she purchased, so long as he and the six-pack leave the premises by 2:30 a.m. A sale in which money has been exchanged prior to 2:00 a.m. but the beer has not been physically served to the customer till after 2:00 a.m. may cause a licensee to be cited. A licensee should take care to make sure that all sales are complete and final prior to 2:00 a.m. and that all customers have exited the premises not later than one half-hour after the time the licensee is required to cease serving alcohol. [47 P.S. Section 4-499(a)].

**16. Is there any area of Pennsylvania law governing restaurant licenses where problem trends seem to keep recurring and where some education for the restaurant licensee may help with compliance?**

A licensee should, of course, follow all sections of the Liquor Code and the Board's regulations.

As discussed earlier, the RAMP program can help a licensee to identify particular areas of the law that may cause problems for them.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
Chief Counsel

cc:Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
R. Kaskiel, Malt Beverage Compliance Section

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