

April 22, 2005

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Tom Cocco

RE: Free Drinks and Discount Pricing Practices

Dear Mr. Cocco:

ISSUE: In your April 12, 2005 e-mail to this office, you ask whether it is legal for a licensee (hotel bar) to offer a free drink or discounted drink to a certain industry group for its Happy Hour special, e.g., could your establishment have a "Nurses Night" where nurses who show their badge or identification could either get a free drink or one dollar (\$1.00) drafts during the two (2)-hour period.

OPINION: With respect to your first inquiry, whether your establishment may have an industry night where members of that industry, upon showing identification, may receive one (1) free drink, section 13.53 of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 13.53] provides that retail licensees may give to or purchase an alcoholic beverage for consumers at retail licensed premises, provided that the giving of alcoholic beverages is not contingent upon the purchase of any other alcoholic beverage. Bar spending or free drinks are limited to one (1) standard size alcoholic beverage per patron in such offering. In restricting free drinks to only industry members, care should be taken 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/gender or other protested classification. Therefore, as long as the free drink offer is limited to one (1) free drink per patron per offering, then it would be permissible.

Regarding discount pricing practices, in each business day, retail licensees may engage in the following discount pricing practices as permitted by section 13.102 of the Board's Regulations: a daily drink special and a happy hour. [40 Pa. Code § 13.102]. Regarding daily drink specials, a retail licensee is permitted to offer one (1) specific type of alcoholic beverage at a discounted price all day, or for a portion of the day, if it chooses. [40 Pa. Code § 13.102(b)(2)]. A specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. [Id.]. With regard to happy hour pricing, a retail licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed two (2) consecutive hours. [40 Pa. Code § 13.102(a)]. During this happy hour, the price of alcoholic beverages may not change. Further, in accordance with section 13.102 of the Board's Regulations, no discount pricing practice may occur between 12:00 a.m. (midnight) and the legal closing hour, i.e., 2:00 a.m., for most retail licensees. [40 Pa. Code § 13.102(a)].

In the context of your question, while you may have a happy hour whereby all draft beers would cost patrons one dollar (\$1.00), it would not be permissible to limit this happy hour special to only those patrons within one (1) specific industry, as this would necessarily mean that pricing for happy hour draft beers would be different for those patrons who are not members of that specific industry. You could, however, still have a "Nurses Night," whereby you could offer one (1) free drink for those in the nursing industry, during the Happy Hour, and offer the one dollar (\$1.00) drafts to everyone for the duration of the Happy Hour. Please note that section 13.51 of the Board's Regulations prohibit licensee from giving anything of value to licensees of another class. [40 Pa. Code § 13.51]. Therefore, you could not, for example, have a promotion in which you only provide a free drink to distributors and their employees.

A copy of Board Advisory Notice No. 16 has been enclosed for your review.

Should you have any further questions or concerns regarding these matters, please do not hesitate to again contact this office.

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
Jerry W. Waters, Sr., Director, Bureau of Licensing

Enclosure

LCB Advisory Opinion No. 05-194