

July 25, 2013

Telephone: (717) 783-9454
FAX: (717) 787-8820

Brian Younkin

RE: Quaker Steak & Lube Promotions

Dear Mr. Younkin:

ISSUE: This correspondence is in response to your e-mail dated July 15, 2013, in which you seek approval, on behalf of Inco Beverage, Inc., to conduct the “Steelers Football Night / Coors Light” and “Penguin’s Hockey / Miller Lite” promotions, which would involve your company and Quaker Steak and Lube, in Pennsylvania.

According to your e-mail, the “Steelers Football Night” sweepstakes would consist of Coors/Inco providing a complimentary halftime buffet for all patrons for eight (8) Steelers football game nights, as well as eight (8) Steelers jerseys, each with a retail value of seventy-eight dollars (\$78.00) awarded to winners off the licensed premises. Participants would register at the “account,” presumed to be a reference to Quaker Steak and Lube, which would offer Coors Light to customers at a discounted price.

According to your e-mail, the “Penguin’s Hockey” sweepstakes would consist of Miller/Inco providing four (4) Penguins jerseys, each with a retail value of one hundred fifty-nine dollars and ninety-nine cents (\$159.99), as well as four (4) pairs of hockey tickets, each with a retail value of fifty dollars (\$50.00), which would be awarded to winners off the licensed premises. Participants would register at the “account,” presumed to be a reference to Quaker Steak and Lube, which would offer twenty (20) ounces of Miller Lite to customers, presumably at a discounted price.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Inco Beverage, Inc. holds Importing Distributor License No. ID-343 (LID 8527) for use by it at its premises located at 147 Allison Drive, Johnstown, Pennsylvania.

OPINION: Initially, be advised that this office has reviewed the proposed promotions with regard to applicable liquor laws and regulations, specifically subsection 493(24) of the Liquor Code [47 P.S. § 4-493(24)] and section 5.32(h) of the Board’s Regulations [40 Pa. Code § 5.32(h)].

Section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] generally permits retail licensees to hold self-sponsored events, tournaments or contests on their licensed premises. Events, tournaments and contests are defined as “a competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants.” [40 Pa. Code § 5.30]. Such events, tournaments, and contests are subject to the following rules: there can be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; there can be no consumption of alcohol by participants as part of the event, tournament, or contest; the price of admission, if any, cannot include a charge for or entitle the participant to receive an alcoholic beverage. [40 Pa. Code § 5.32(e)].

Self-sponsored means paid for and carried out by the licensee. It would not be permissible for a third party to conduct such events, tournaments or contests. However, retail licensees may permit events on the licensed premises sponsored by groups constituting a league, or events for the benefit of, and officially sponsored by, bona fide charitable organizations qualified, approved by and registered with the Department of State and operated under 49 Pa. Code Part I, Subpart B (relating to charitable organizations). [40 Pa. Code §§ 5.32(d)(3)-(4)(i)]. Such an event must comply with the Solicitation of Funds for Charitable Purposes Act [10 P.S. §§ 162.1-162.24], the Local Option Small Games of Chance Act [10 P.S. §§ 311-327] and the Bingo Law [10 P.S. §§ 308-308.1]. [40 Pa. Code § 5.32(d)(4)(ii)].

It should be noted that gambling activities, while unlawful generally, may be considered to be lawful if conducted by an entity that holds a small games of chance permit. It may be advisable to contact the County Treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine what activities are permissible with such a permit and what prize limits are permissible. It is also advisable to contact local police, the Pennsylvania State Police, or the County District Attorney's Office, as to what constitutes unlawful gambling.

More specifically, section 5.32(h) of the Pennsylvania Liquor Control Board's (“Board”) Regulations states that a manufacturer, manufacturer's representative, or licensee may sponsor sweepstakes promotions subject to the following conditions:

- i. No purchase is necessary to enter.
- ii. Entrants shall be twenty-one (21) years of age or older.
- iii. Retail licensed premises may only be involved as pick-up or drop-off points for entry forms and not for the conducting of drawings or the awarding of prizes.
- iv. Alcoholic beverages may not be part of the prize.

[40 Pa. Code § 5.32(h)].

Further, although your e-mail indicates that the prizes being awarded will not include alcoholic beverages, it remains unclear, however, whether the discounted prices would be in accordance with the provisions of the Liquor Code and the Board's Regulations on daily drink specials and happy hours, or whether such alcohol would be provided as a reward for participating or for winning. [47 P.S. 4-406(g); 40 Pa. Code § 13.102]. If discounts were associated with participating in or winning the sweepstakes, this would be considered as awarding alcohol as part of the prize and is not permitted. It may also violate the Board's discount pricing practice regulations located in section 13.102 of the Board's Regulations. [40 Pa. Code § 13.102].

In each business day, retail licensees may have only two (2) discount promotions: a daily drink special and a happy hour. [40 Pa. Code § 13.102]. With regard to happy hour, retail licensees may discount any or all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum fourteen (14) hours per week. [47 P.S. 4-406(g)]. During this time, the price of alcoholic beverages may not change. Further, the happy hour cannot extend beyond 12:00 midnight. [40 Pa. Code § 13.102(a)]. With regard to the daily drink special, retail liquor licensees may offer one (1) specific type of alcoholic beverage at a discounted price all day, or for a portion of the day. [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.]. For example, a specific brand of beer such as "Blue Hound Pilsner" or "Brendan's Cream Stout" or "Oil City Light," may be discounted, but not "all draft" or "all bottled" beer or "all Blue Hound products." Daily wine drink specials could be "Chardonnay" or "Merlot," but not "all white wine" or "all red wine" or "all Kendall wines." Permissible spirits specials would be "Rum and Cola" or "all brandy drinks," but not "all well drinks" or "all Jackson's products." [See Board Advisory Notice No. 16]. Like

happy hours, daily drink specials must end by midnight; there can be no discounting of alcohol between 12:00 midnight and the retail licensee's closing time. Further, food may not be discounted as part of a package with alcohol because it would violate the law that prohibits giving something of value to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(j)].

Additionally, the Liquor Code generally prohibits any licensee, manufacturer or other person from offering or giving to trade or consumer buyers any prize, premium, gift or other inducement to purchase alcohol. [47 P.S. § 4-493(24)(i)]. However, there is an exception to this general prohibition which allows the offering or giving of "advertising novelties of nominal value." [Id.]. The Board has defined "advertising novelties of nominal value" as items that have a wholesale cost of fifteen dollars (\$15.00) or less and contain advertising material. [47 P.S. § 4-493(24)(i); 40 Pa. Code § 13.52; Board Advisory Notice No. 10 (6th Revision)]. Advertising novelties typically consist of items such as matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, pens, or pamphlets. [Id.]. Advertising novelty giveaways may or may not be conditioned on the purchase of an alcoholic beverage. [Id.]. As your promotions involve more than one (1) class of licensee, you must also comply with section 443 of the Liquor Code [47 P.S. § 4-443] and section 13.51 of the Board's Regulations [40 Pa. Code § 13.51], which generally prohibit manufacturers from giving anything of value to retail licensees, except for advertising novelties as provided in section 13.52 of the Board's Regulations [40 Pa. Code § 13.52].

Further, please be advised that prior approval of malt or brewed beverages point-of-sale ("POS") material and retail licensed premises POS material is no longer required. However, the requirement for prior approval of POS material intended for use in the Board's wine and spirits stores from the Bureau of Product Management remains. The total cost of all POS advertising material relating to any one (1) brand of any one (1) manufacturer at any one (1) time may not exceed three hundred dollars (\$300.00) on a retail licensed premises. [47 P.S. § 4-493(20)(i)].

Therefore, in response your question, please be advised that based on the information submitted, this office is unable to provide you with a definitive answer as to whether the promotions described conform to the Liquor Code and the Board's Regulations.

Brian Younkin
July 25, 2013
Page 5

If you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please feel free 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

LCB Advisory Opinion No. 13-346