

September 16, 2013

Telephone: (717) 783-9454

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Denise Mathias

RE: Drink Making Contest

Dear Ms. Mathias:

ISSUE: This office is in receipt of your e-mail dated August 26, 2013, wherein you indicate that you hold a limited distillery license. You explain that that you want to hold a drink-making contest for professionally employed bartenders at a licensed restaurant. The three (3) bartenders who make the three (3) best drinks will be awarded monetary prizes. The funds for the monetary prizes will be donated by third-party business partners who are not licensees. You ask if such a contest is permissible.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Old Republic Distillery Inc. is the holder of Limited Distillery License No. AL-6 (LID 67272) for premises located at 47 Cherry Street, Seven Valleys, Pennsylvania.

OPINION: Please be advised that section 13.51 of the Board’s Regulations prohibits a licensee from contributing to or accepting, directly or indirectly, from another licensee of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose. [40 Pa. Code § 13.51]. Section 493(24)(i) of the Liquor Code allows manufacturers and licensees to provide advertising novelties of nominal value, which bear advertising matter, to other licensees and consumers with or without a purchase. [47 P.S. § 4-493(24)]. “Nominal value” currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6th Revision)]. “Advertising novelties” has been defined in the Board’s Regulations as matches, disposable lighters, bottle or can openers, caps, tee shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter. [40 Pa. Code § 13.52(a)]. Therefore, as a manufacturer, you would be prohibited from offering monetary prizes to bartenders employed by retail licensees, and you would also be prohibited from paying for the contest.

Additionally, please note that 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.

Therefore, considering the above, as a manufacturer, you would not be permitted to conduct an event a retail licensed premises or award prizes at the retail licensed premises.

Should you have any additional questions, do not hesitate to 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, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-421