

October 21, 2013

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Judd Goodman

Brubar, Inc.

E: Points Promotion Based Upon Visits

Dear Mr. Goodman:

ISSUE: This is in response to your e-mail dated September 16, 2013, in which you ask whether a proposed reward system in which you give points on the basis of guest visits is legal. You intend to provide cash or gift cards in exchange for the accumulated points. You also pose a question as to whether such a reward system would constitute a contest.

Records of the Pennsylvania Liquor Control Board ("Board") provide that Brubar, Inc., holds Restaurant Liquor License No. R-15865 (LID 48415) for use by it at premises located at 228-234 North 2nd Street, Harrisburg, Pennsylvania.

OPINION: Section 493(24)(i) of the Pennsylvania Liquor Code and Advisory Notice No. 10 (6th Revision) generally prohibit licensees from offering anything of value to induce, directly or indirectly, the purchase of alcoholic beverages, or from offering or giving to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value. [47 P.S. § 4-493(24)(i)]. Novelty items bearing advertising matter, such as matches, disposable lighters, bottle or can openers, tee shirts, caps, corkscrews, pens and pamphlets, may be distributed with or without proof of purchase by any class of licensee to trade or consumer buyers. [Board Advisory Notice No. 10 (6th Revision)]. Advertising novelty items are limited to a wholesale cost of fifteen dollars (\$15.00) each or less.

Promotions that involve the offering of points are problematic only when points are accumulated based on the purchase of beer/alcohol. Since your promotion of the accrual of points is based upon visits only and excludes the accrual of points on purchases of beer/alcohol, your promotion would be permissible. The issuance of cash and/or gift cards in exchange for accumulated points is also permissible. However, please note that if points/rewards are used to acquire alcoholic beverages, you would be required to establish that the value of the points is equivalent to the cash price.

Please be advised that pursuant to section 5.32(d) of the Board's Regulations, there is a prohibition of retail licensees conducting events, tournaments and contests, and/or awarding any trophies, prizes or premiums on the licensed premises. [40 Pa. Code § 5.32(d)]. There are exceptions to the prohibitions, one of which is the self-sponsored event. [Id.]. For purposes of the Liquor Code and Board Regulations, the total value of prizes for any given event, tournament or contest may not exceed one thousand dollars (\$1,000.00). The total value of all prizes awarded in any seven (7)-day period may not

exceed twenty-five thousand dollars (\$25,000.00). [40 Pa. Code § 5.32(f)(7)]. Please note that these limits are not only applicable to cash prizes, but include the fair market value of any non-cash prizes.

In response to your question as to whether such a promotion would be regarded as a contest, it does not fall within the operative definition of a contest. Events, tournaments and contests are defined as “a competitive endeavor involving skill, speed, strength or endurance.” [40 Pa. Code § 5.30]. Accordingly, a proposed point system based upon the number of visits to the premises is not a contest.

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. 13-462