

November 19, 2013

Telephone: (717) 783-9454

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Jorge Garcia

Re: Discount Pricing

Dear Mr. Garcia:

ISSUE: Your e-mail of October 15, 2013 requests information regarding permissible discount pricing promotions at your licensed establishment, specifically whether you are able to discount bottles for bottle service during happy hour. You plan to discount your top shelf vodka bottles on Thursday nights between 10:00 p.m. and 12:00 a.m.

Pennsylvania Liquor Control Board (“Board”) records indicate that Tussey Building Inc. & Are U Hungry holds Restaurant Liquor License No. R-19808 (LID 57056) for the premises located at 222 West Beaver Avenue, State College, Pennsylvania.

OPINION: Please be advised that bottle service discounts are permitted as long as they comply with the rules regarding discount pricing. If the price in question is not the regular retail price, but rather a discounted price, it would be permissible only if it was consistent with either one (1) of the two (2) daily discounts permissible to licensees under the Board’s Regulations. Those regulations provide that each day retail licensees may have a daily drink special and a happy hour. [40 Pa. Code § 13.102].

With regard to happy hour pricing, a licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum of fourteen (14) hours per week. [47 P.S. § 4-406(g)]. During this happy hour, the price of alcoholic beverages may not change. Section 406(g) of the Liquor Code [47 P.S. § 4-406(g)] requires notice

of all happy hours to be posted on the licensed premises seven (7) days prior to the happy hour.

In addition to happy hours, a 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, as a daily drink special. [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.].

No discount pricing practice may occur between 12:00 a.m. (midnight) and the legal closing hour for restaurant, hotel, and eating place licensees. [40 Pa. Code § 13.102(a)].

The following are examples of permissible daily beer specials: a specific brand of beer such as “Blue Hound Pilsner” or “Brendan’s Cream Stout” or “Oil City Light,” but not “all draft” or “all bottled” beer or “all Blue Hound products.” Daily wine specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall’s wines.” Permissible spirits specials would be “Rum and Cola” or “all brandy drinks,” but not “all well drinks” or “all Jackson’s products.” [Board Advisory Notice No. 16 (Amended)].

Accordingly, it is permissible for you to sell the bottles in the timing and method you have proposed. Please be aware that selling, furnishing or giving alcoholic beverages, or permitting to sell, furnish or give alcoholic beverages to minors or to persons who are visibly intoxicated is prohibited by the Liquor Code. [47 P.S. § 4-493(1)].

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

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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. 13-494