

November 26, 2013

Telephone: (717) 783-9454

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Allison Stadd
Manager, Marketing & Communications
Shake Shack

RE: Happy Hour

Dear Ms. Stadd:

ISSUE: This office is in receipt of your e-mail dated November 13, 2013, wherein you indicate that it came to your attention that a happy hour promotion that you had planned for your Center City Shake Shack location was not in accordance with the Pennsylvania Liquor Control Board's ("Board") Regulations. You note that the happy hour ran for one (1) day for two (2) hours and that you immediately ceased the special once the issue came to your attention.

You state that you wish to propose a new happy hour special and seek official approval from the Board. The special you propose involves offering half off all beer and wine from 4-6 p.m., Monday through Friday.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that the Shake Shack Samson Street Philadelphia LLC t/a The Shake Shack holds Restaurant Liquor License No. R-2603 (LID 65605) for premises located at 2000-2002 Sansom Street, Philadelphia, Pennsylvania.

OPINION: Two (2) daily discounts are 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.].

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)].

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)].

As outlined above, the happy hour discount that you have proposed would be permissible.

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. 13-508