

February 6, 2014

Telephone: (717) 783-9454

Fax: (717) 787-8820

Erik Cook

**RE: One Day Event Food and Drink Specials**

Dear Mr. Cook:

ISSUE: This is in response to your e-mail of January 28, 2014, in which you asked whether the following food and drink specials are legal in Pennsylvania for a one (1) day event:

- 1:00 p.m. \$1 Miller Lite bottles and 50% off apps
- 2:00 p.m. \$2 Coors Light bottles and 40% off apps
- 3:00 p.m. \$3 Miller Lite drafts and 30% off apps
- 4:00 p.m. \$4 Coors Light drafts and 20% off apps
- 5:00 p.m. \$5 Fireball shots and 10% off apps
- 6:00 p.m. Full prices

It will be assumed for purposes of this response that the reference to “apps” means appetizers, i.e., discounted food.

Pennsylvania Liquor Control Board (“Board”) records indicate that PL Phase One Operations LP, trading as XFinity Live!, holds Restaurant Liquor License No. R-8504 (LID 65838) for the premises located at 1100 Pattison Avenue, Philadelphia, Pennsylvania.

OPINION: No, the pricing proposal is not legal. Rules on discount pricing practices are found 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].

Regarding the happy hour, you are permitted to 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)].

Regarding a daily drink special, you are permitted to 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 a happy hour, a daily drink special must end by midnight; there can be no discounting of alcoholic beverages between midnight and your closing time of 2:00 a.m.

Further, food may not be discounted as part of a package with alcoholic beverages because it would violate the Liquor Code provision that prohibits giving something of value to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(j)]. Alcohol may only be discounted as part of a food package if it is done in conformity with a discount pricing packages mentioned earlier.

Finally, the Pennsylvania courts have held that a licensee cannot change drink prices from day to day, and so price changes within a given day are also prohibited, except as set forth in the above-noted discount pricing practices. [*see In re Locy*, 557 A.2d 1164 (Pa. Cmwlth. 1989), *appeal denied* 563 A.2d 889 (Pa. 1989)].

The proposed specials would not be permissible in that they would violate the prohibition on packaging food with alcoholic beverages, and they include more discounted pricing than is permitted in one (1) day.

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

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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. 14-022