

February 21, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

David and Jennifer Black

Re: Sampling Spirits and Costs

Dear Mr. and Mrs. Black:

ISSUE: This is in response to your e-mail sent on February 12, 2014, wherein you ask for clarification about your business plan. You have a limited distillery license and are proposing a charge of two dollars (\$2.00) to three dollars (\$3.00) to sample your spirits. A person who purchases a sample would receive a ticket or coupon – limit one (1) per person – for the same amount that he or she paid for the sample. That ticket or coupon could then be applied towards the purchase of a bottle of your spirits, if the person chooses to buy a bottle. You ask if this is permitted under the law.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that David W. Black, Jr. and Jennifer M. Black hold Limited Distillery License No. AL-2 (LID 66649) for the premises at 93 Blackout Alley, Brookville, Pennsylvania.

OPINION: Section 505.4(b)(5) of the Liquor Code provides that limited distilleries may sell samples or provide them free of charge. [47 P.S. § 5-505.4(b)(5)]. The only issue is whether a limited distillery may apply, via a ticket or coupon, the purchase price of a sample towards the purchase of a bottle.

Section 493(24)(i) of the Liquor Code prohibits a licensee, including a manufacturer, from offering things of value as an inducement to the purchase of alcohol, with the exception of advertising novelties of nominal value and coupons. [47 P.S. § 4-493(24)(i)]. The Board has defined “advertising novelties of nominal value” 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)]. In addition, you may sell promotional items advertising your business only, such as tee shirts, mugs, caps and other similar items, to the general public. [40 Pa. Code § 13.52(f)].

Manufacturers may offer coupons, but only for the purchase of wines and spirits through the Board's wine and spirits stores or for the purchase of malt or brewed beverages through distributors and importing distributors. [47 P.S. § 4-493(24)(i)].

To summarize, you may charge a fee for offering samples of your product. In addition, you may offer an advertising novelty to the person who purchases the sample, or a coupon towards the purchase of any non-alcoholic item, or a coupon towards the purchase of your products at one of the Board's wine and spirits stores. You may not offer, to the person who purchases a sample, a coupon for the purchase of alcohol on your licensed premises or additional Board-approved location.

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. 14-039