

February 26, 2014

Telephone: 717-783-9454

Fax: 717-787-8820

Mike Bunch

VIA Email: [bunch1140@yahoo.com](mailto:bunch1140@yahoo.com)

**RE: Baskets of Cheer**

Dear Mr. Bunch:

ISSUE: This office is in receipt of your email of January 27, 2014, in which you noted that you recently purchased a bar in Lebanon County. You advise that you wish to conduct a fundraiser with the Children's Miracle Network. This fundraiser would consist of "baskets of cheer," for which you would get donations and sell raffle tickets. You would also take donations for "drinking out of a Mason jar."

Pennsylvania Liquor Control Board ("Board") records indicate that Michale D. Bunch is President, Director, Stockholder and Manager of MTBunch Inc., which is the holder of Restaurant Liquor License No. R-11673 (LID 68571) for use by it at premises located at 319 South Fifth Street, Lebanon, Pennsylvania.

OPINION: The event as you have described it would not be permissible, as you are not permitted to give alcohol as a prize. Be advised that section 5.32 of the Board's Regulations [40 Pa. Code § 5.32] permits retail licensees, such as clubs, to hold self-sponsored events, tournaments, or contests on their licensed premises. Self-sponsored means paid for and carried out by the licensee.

Events, tournaments, and contests that are sponsored by the licensee are subject to the following rules: there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest; there may be no consumption of alcohol by participants as part of the event, tournament, or contest; the price of admission may not include a charge for or entitle the participant to receive an alcoholic beverage, the value of all prizes awarded may not exceed five hundred dollars (\$500.00), and the total value of all prizes awarded in a seven (7)-day period may not exceed five thousand dollars (\$5,000.00). [40 Pa. Code § 5.32(e)]. Finally, licensees must maintain records of the prizes and winners on the licensed premises for two (2) years following the event, tournament, or contest. [40 Pa. Code § 5.32(e)(9)].

One of the conditions mentioned above is that no unlawful gambling may be directly or indirectly associated with any event, tournament, contest or activity on the licensed premises. If there is unlawful gambling, the licensee will be held strictly liable for such activity and could be cited for violation of the Liquor Code and the Board's Regulations. [40 Pa. Code § 5.32(e)(2)]. Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether the drawings referred to would constitute unlawful gambling. However, it should be noted that unlawful gambling consists of the following elements: (1) consideration or a fee or charge to play; (2) an element of chance; and (3) a prize or reward. Pennsylvania Liquor Control Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986). Be advised that some gambling activities, while unlawful generally, are considered to be lawful if conducted by an entity that holds a small games of chance permit. You should contact your County Treasurer or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 to determine what activities are permissible with such a permit and whether the prize limits are permissible. You may also wish to contact the local police, the Pennsylvania State Police, or the County District Attorney's Office for an official opinion concerning whether the drawings would constitute unlawful gambling.

The Board's Regulations require that licensees shall maintain on the licensed premises for two (2) years from the date of the event, an itemized list of all prizes for each event, tournament, or contest indicating each prize, its value and the name and address of the recipient. [40 Pa. Code § 5.32(e)(9)]. Finally, be advised that the Board's Regulations require a club licensee to adhere to the provisions of its constitution and/or bylaws. [40 Pa. Code § 5.81].

It should be noted that raffles typically involve gambling and thus would not be permissible unless authorized under the Small Games of Chance Act. However, even if the raffle itself is lawful, the giving of alcohol as a prize is not. Pursuant to section 493(24) of the Liquor Code [47 P.S. § 4-493(24)], Board Advisory Notice No. 10 (6th Revision) and section 5.32(h) of the Board Regulations [40 Pa. Code § 5.32(h)], alcoholic beverages may not be included as part of a prize.

One option might be for you to partner with an entity that holds a Special Occasion Permit ("SOP"). Pursuant to section 408.4 of the Liquor Code, the Board may issue SOPs to eligible entities. [47 P.S. § 4-408.4]. Entities that qualify may obtain an SOP that would authorize them to sell liquor and/or malt or brewed beverages to persons twenty-one (21) years of age or older who are not visibly intoxicated. [47 P.S. §§ 4-408.4, 4-493(1)]. SOPs are generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. [47 P.S. § 4-408(i)]. The SOP is to be used as a means of raising funds for the holder, but can be used in conjunction with activities or events involving other entities. [47 P.S. § 4-408.4(m)].

The holder of an SOP may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)]. Please be advised, however, that if the proposed event will be conducted on the licensed premises, it may be necessary for you to de-license the area to be used for the SOP, as dual licensing of a particular premises is prohibited.

Regarding your “drinking out of a Mason Jar” promotion, by e-mail dated February 5, 2014, you advised that this would entail individuals drinking out of individual jars for a donation of money. Your promotion may be permissible. Pursuant to section 13.53 of the Board’s Regulations [40 Pa. Code § 13.53], a retail licensee is permitted to offer one (1) free standard-sized alcoholic beverage per patron in any offering, as long as the giving of the free drink is not contingent upon the purchase of any other alcoholic beverage. A standard-sized alcoholic beverage means twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one half (1.5) fluid ounces of liquor. [Id.]. Thus, if you were to give away one (1) free drink in a Mason jar per day and donate any money received, this would be acceptable. However, be advised that you may not call your event a tournament or contest because you are providing alcohol.

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. 14-048