

February 27, 2014

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Guang Li

**RE: Restaurant Advertising Discounted Beer**

Dear Mr. Li:

ISSUE: This is in response to your e-mail of January 23, 2014, in which you state that you have a restaurant selling beer. You ask if it is legal to send out a flyer about discount beer or if you can only post in your restaurant. You do not disclose the identity of your restaurant; however, it will be assumed for purposes of this response that the entity in question holds a valid retail liquor license, issued by the Pennsylvania Liquor Control Board ("Board").

OPINION: Initially, please be advised that in each business day, retail licensees (such as restaurants and eating place retail dispensers) may have a daily drink special and a happy hour.

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.

Regarding daily drink specials, 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. [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, i.e., 2:00 a.m. 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)].

Regarding advertisements, please be advised that section 498 of the Liquor Code allows the advertising of both the availability and the price of alcoholic beverages in Pennsylvania. [47 P.S. § 4-498]. “Advertisement” means any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (i.e., Internet), or any other printed or graphic matter including booklets, flyers or cards, or on the product label or attachment itself. [47 P.S. § 4-498(g)].

Section 498(b) of the Liquor Code prohibits any false, deceptive or misleading statements in price advertisements, disparaging statements of the products of a competitor, or statements referring to monetary comparisons between brands. The prices that are advertised or displayed on the licensed premises shall be those that are in effect at the time of the advertisement or display. [47 P.S. § 4-498(b)(1)-(3), (c)].

With regard to advertising alcoholic beverages, please note that the entity responsible for the advertisement shall be clearly identified in the advertisement. No licensee shall distribute by mail, personally, or through servants, agents or employees, price lists, circulars or handbills off the licensed premises to the general public as a means of advertising liquor, wine or malt or brewed beverages. To be permissible, the licensee’s distribution of such materials must be preceded by a request to receive the promotional material. [PLCB Advisory Notice No. 15 (4<sup>th</sup> Revision)].

The Pennsylvania Attorney General’s Office has previously determined that this prohibition does not prevent a licensee from advertising the same in a newspaper or community newspaper. No print advertisement of alcoholic beverages is permitted within three hundred (300) feet of any church, school or public playground, although this prohibition does not preclude any point-of-sale advertisement, menus or other print advertisement regarding alcoholic beverages if

such advertisements are inside the licensed premises. The advertisement of alcoholic beverages may not contain language or slogans directed to minors to promote the consumption of alcoholic beverages.

Further, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution, although you may wish to consult the decision in Pitt News v. Pappert, 379 F.3d 96 (3d Cir. 2004), for its application to section 498(e)(5) of the Liquor Code. No obscene advertisement is permitted. Advertisements of alcoholic beverages cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(e)(1)-(6), (f)].

Finally, section 493(24)(i) of the Liquor Code prohibits the offering of anything of value to induce the purchase of an alcoholic beverage. [47 P.S. § 4-493(24)(i)]. Further, section 13.102 of the Board's Regulations sets forth the manner in which retail licensees may discount the price of alcoholic beverages.

Thus, in light of the above, it remains impermissible for licensees to conduct their own flyer/magazine/circular mailing because the licensee would technically own and operate the publication, which is a clear violation of section 498(e)(2). In this case, it is presumed that, by "sending out flyers" you mean distributing them in some fashion other than a newspaper or similar outlet.

As mentioned above, section 498(e)(2) of the Liquor Code prohibits the distribution by mail of price lists, circulars or handbills to the general public, as a means of advertising liquor, wine or malt or brewed beverages. [47 P.S. § 4-498(e)(2), Board Advisory Notice No. 15]. While the Liquor Code does not define the terms "circular" or "mailing," Webster's II New College Dictionary (1999) defines "circular" as a "printed advertisement, directive or notice for mass distribution," and "mailing" is defined as "a batch of mail sent at one time by a mailer."

For purposes of clarity and uniformity, the Board has generally defined the terms "circular," "price list" and "handbill" to mean any form of "unsolicited" advertising. The Pennsylvania Attorney General's Office has determined, however, that this prohibition does not prevent a licensee from advertising the same in a newspaper or community newspaper. [See also 40 Pa. Code §§ 13.1 – 13.62].

You may, however, send flyers to individuals who have chosen to be included on a mailing list and have requested to be sent such information.

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,  
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