

March 20, 2014

Telephone: (717) 783-9454

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Vincent DeGiosio

Re: Free Drink Tokens

Dear Mr. DeGiosio:

ISSUE: This is in response to your e-mail sent on March 14, 2014, wherein you state that you are a small performing arts theater preparing for a new event at which you would like to include a token for a free alcoholic beverage. You ask whether providing such free drink tokens to event attendees would be permissible.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that JTAMS, Inc. holds Performing Arts Facility Restaurant License No. PAF-78 (LID 65986) for use by it at premises at 14 West Broadway, Jim Thorpe, Pennsylvania.

OPINION: Section 413(f)(1) of the Liquor Code [47 P.S. § 4-413(f)(1)] states that performing arts facility licenses are to be considered restaurant liquor licenses subject to certain additional restrictions and privileges, including restrictions on the permissible hours during which liquor and malt or brewed beverages may be sold. Sales of liquor and malt or brewed beverages may be made two (2) hours before, during, and one (1) hour after any performance at the licensed facility; however, sales may not be made from 2:00 a.m. to 7:00 a.m. Sales may not occur prior to 1:00 p.m. or after 10:00 p.m. on Sundays. [47 P.S. § 4-413(f)(1)]. In addition, persons who rent out a licensed facility may sell tickets for admission into the facility, even if the purchase of a ticket provides the purchaser access to alcohol. [See generally, Pennsylvania State Police, Bureau of Liquor Control Enforcement v. American Serbian Club of Pittsburgh, 750 A.2d 405 (Pa. Cmwlth. 2000).].

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.]. Therefore, it would be permissible to give one (1) free drink token to each person, so long as the drink is limited to one (1) such drink and consists of no more than twelve (12) fluid ounces of malt or brewed beverages, four (4) fluid ounces of wine, or one and a half (1.5) fluid ounces of liquor.

However, be advised that 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)]. Therefore, a free drink token could not be made contingent upon an admission ticket or other payment as it would then no longer be free; such a drink token offering would then constitute the sale of an alcoholic beverage. In other words, you could not provide a free drink for purchasing an admission ticket without such an exchange being considered a sale subject to discount pricing rules.

With regard to drink discounts, please be advised that if the offering of a token to a patron amounts to a discount off the regular drink price, such a discount would be permissible only if allowed under one (1) of the two (2) daily discounts permissible to licensees under the Board's Regulations. Those regulations allow retail licensees to offer 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 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 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.].

No discount pricing practice may occur between 12:00 a.m. (midnight) and the legal closing hour for restaurant licensees. [40 Pa. Code § 13.102(a)]. For performing arts facilities, that legal closing hour would be 10:00 p.m. on Sundays.

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)].

Finally, although there is nothing in the Liquor Code or the Board’s Regulations which would specifically prohibit the use of tokens, please note that section 493(1) of the Liquor Code prohibits the service, furnishing or giving of any liquor or malt or brewed beverages to any person who is visibly intoxicated or to any minor and imposes strict liability on a licensee for violating this section. [47 P.S. § 4-493(1)].

Please feel free to again contact this office if you have any further questions regarding this matter, the Liquor Code, or the Board’s Regulations.

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
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Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 14-097