

March 31, 2014

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Catherine Kilburn
People's Light and Theatre
The Farmhouse and Bistro

RE: Sale of Wine and Beer to Staff at Cost

Dear Ms. Kilburn:

ISSUE: This office is in receipt of your e-mail dated February 9, 2014, in which you inquire whether you are able to sell wine and beer to your staff at cost since the stores are usually closed by the time that they leave work. You inquire if the practice is permitted, and if so, should the transactions be recorded or just subject to the company policy, which restricts sales to purchasers of legal age.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Actors' Inn, Inc. holds Hotel Liquor License No. H-5251 (LID 7605) for premises located at 39 Conestoga Road, Malvern, Pennsylvania.

OPINION: Please be advised that generally wine may only be sold in Pennsylvania for off-premises consumption by the Board, the holder of a limited winery license or the holder of a sacramental wine license. However, patrons of restaurant or hotel licensees who have purchased, but only partially consumed, a bottle of wine on the premises may take the bottle with them when they leave, as long as the bottle was purchased in conjunction with a meal which was consumed on the premises, and so long as the bottle is resealed. [47 P.S. § 4-406(e)]. For purposes of this law, a "meal" means food prepared on the premises, sufficient to constitute breakfast, lunch, or dinner; it does not mean a snack, such as pretzels, popcorn, chips, or similar food. [Id.]. The sale of an unopened bottle of wine for

consumption solely off the premises remains unlawful. Therefore, the sale of bottles of wine to your staff for off premises consumption would not be permissible.

Holders of retail licenses other than clubs may sell malt or brewed beverages for off-premises consumption when sold in quantities of not more than one hundred ninety-two (192) fluid ounces in a single sale to one (1) person. [47 P.S. § 4-407(a)]. Act 11 of 2011 clarified that retail licensees may sell beer-to-go in either open or closed containers, as long as the municipality in which they are located does not have an ordinance restricting open containers in public places.

However, while the Liquor Code allows beer to be taken off the licensed premises in an unsealed container, local municipalities may have ordinances which prohibit open containers of alcoholic beverages within the boundaries of that municipality. As this office cannot advise you as to the open container laws in your municipality, it is suggested that you contact your local municipality or local police department to determine if your municipality has any applicable open container ordinances.

Please be advised that licensees are subject to time restrictions as to sales of alcoholic beverages. Hotel licensees may sell liquor and malt or brewed beverages from 7:00 a.m. until 2:00 a.m. of the following day except Sunday; Sunday sales are permitted between midnight and 2:00 a.m. [47 P.S. § 4-406(a)(2)]

If “at cost” refers to a discounted price, your intention to sell alcohol to staff “at cost” violates the Liquor Code provisions as to discount pricing. It is only permissible for retail liquor license holders to discount alcoholic beverages in accordance with section 406 of the Liquor Code and the Board’s discount pricing practice regulations. [47 P.S. § 4-406; 40 Pa. Code § 13.102]. Those regulations provide that, each day, retail licensees may have 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 this 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 of all happy hours 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.].

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)].

No discount pricing practice may occur between 12:00 a.m. (midnight) and the legal closing hour for restaurant, hotel, and eating place licensees. [40 Pa. Code § 13.102(a)].

If you intend to offer an employee discount, it would have to comply with and be incorporated within the aforementioned guidelines, specifically available to all patrons, and restricted to being sold prior to midnight, and limited to beer sales for off premises consumption.

If you have any further questions or concerns regarding this matter, the Liquor Code or the Board’s Regulations, please do not hesitate to again contact this office.

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.

Catherine Kilburn

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Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
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LCB Advisory Opinion No. 14-114