

April 9, 2014

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Lane A. McFarland

RE: Exclusive Promotions

Dear Mr. McFarland:

ISSUE: Your e-mail of March 21, 2014 requests guidance regarding the specific law that outlines which beers are able to be discounted. For example, you inquire whether you may offer a promotion for Bud Light bottles exclusively during a Penguins game, or whether you must offer the promotion for all bottles in the same category.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that McFarland Construction, Inc. is the holder of Restaurant Liquor License No. R-6388 (LID 64188), for use by it at the premises located at 400 West Pike Street, Meadow Lands, Pennsylvania.

OPINION: In each business day, retail licensees may have a daily drink special and a happy hour. Other than providing alcohol during catered events, the daily drink special and happy hour are the only methods by which a retail licensee may discount alcoholic beverages.

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.].

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)].

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)].

Therefore, in response to your specific question, it would be permissible to offer a promotion for Bud Light bottles exclusively for a period of time not to exceed four (4) consecutive hours (as a happy hour promotion), or for a portion of a day (as a daily drink special), with the time the promotion is offered corresponding to a Penguins game.

If you have any further questions or concerns regarding the Liquor Code or the Board’s Regulations, please feel free 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.

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