

April 18, 2014

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Sarah Grube
Sands Bethlehem Event Center / Vision Bar

RE: Advertising Free Alcohol

Dear Ms. Grube:

ISSUE: This is in response to your e-mail of March 29, 2014, in which you reference an advertisement which one (1) of your employees found posted on Facebook. The Wave Nightclub advertisement offered one (1) free well drink or domestic beer between 10:00 p.m. and midnight on March 28 and 29, 2014. You state that you understand the rules concerning free alcohol in Pennsylvania. However, you request guidance as to if and how free alcohol may be advertised.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Sands Bethworks Gaming, LLC, t/a Sands Casino Resort Bethlehem, holds Restaurant Liquor License No. R-21495 (LID 61338) for use by it at the premises located at 77 Sands Boulevard, Bethlehem, Pennsylvania.

OPINION: With regard to alcoholic beverage advertisements, please be advised that “advertisement” is defined in the Liquor Code as 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)].

The advertisement of alcoholic beverages, their availability and/or their prices, by in-state and out-of-state manufacturers, wholesalers, retailers, shippers, and Board licensees, generally is permitted in Pennsylvania, subject to the following conditions:

1. The entity responsible for the advertisement must be clearly identified in the advertisement. [47 P.S. § 4-498(e)(1)].
2. The advertisement cannot be obscene. [47 P.S. § 4-498(e)(6)].
3. The advertisement cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(f)].
4. The advertisement cannot be directed to minors. The use of any subject matter, language, or slogan directed to minors to promote the consumption of alcoholic beverages is not allowed. However, this does not prohibit or restrict advertisements to those persons of legal drinking age. [47 P.S. § 4-498(e)(4)].

Section 498(b) 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. Prices advertised or displayed on licensed premises shall be those that are in effect at the time of advertisement or display. [47 P.S. § 4-498(b)-(c)]. Section 493(24)(i) of the Liquor Code further prohibits any licensee from offering anything of value to induce directly the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)].

Please note that the entity responsible for the advertisement shall be clearly identified in the advertisement. 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. 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)].

As noted earlier, no obscene advertisement is permitted. 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), which held section 498 of the Liquor Code unconstitutional as applied to The Pitt

News. [Pitt News v. Pappert, 379 F.3d 96, 113 (3d Cir. 2004) (holding 47 P.S. § 4-498 unconstitutional, as applied)].

Section 498(e)(2) of the Liquor Code prohibits, however, 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)]. 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 interpreted the terms “circular,” “price list” and “handbill” to mean any form of “unsolicited” advertising. However, the Pennsylvania Attorney General’s Office has determined that this prohibition does not prevent a licensee from advertising in a newspaper or community newspaper. [See 40 Pa. Code §§ 13.1 – 13.62].

Therefore, provided that the offering of free alcohol does not violate any of the advertising provisions described above, there is nothing in the Liquor Code or the Board’s Regulations that would prohibit an entity/licensee from advertising such free alcohol.

Retail licensees may give to or purchase for consumers one (1) standard-size alcoholic beverage on retail licensed premises provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverages. [40 Pa. Code § 13.53]. Bar spending or free drinks are limited to one (1) alcoholic beverage per patron in any such offering. A standard-size alcoholic beverage is twelve (12) fluid ounces of a malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one-half (1½) fluid ounces of liquor. [40 Pa. Code § 13.53]. There is no requirement that all patrons be offered a free alcoholic beverage. Accordingly, it would be permissible to offer a free alcoholic beverage, as described above, to patrons, provided that such offering is not based on an unlawful discriminatory basis, such as race, sex or gender.

With regard to casinos, section 493(24)(ii) of the Liquor Code allows a holder of a restaurant license that is also approved to hold a slot machine license, such as Sands Bethworks Gaming, LLC, to offer free drinks to an individual who is actively engaged in playing a slot machine. [47 P.S. § 4-493(24)(ii)]. In addition, section 1329.1A of the Gaming Act states that the provisions of section 493(24)(ii) also apply to table games. While this office would interpret that section as meaning that an individual who is actively playing table games may be provided

free drinks in the same manner as an individual who is actively playing a slot machine, this office is not authorized to interpret the Gaming Act. Therefore, you may wish to contact the Pennsylvania Gaming Control Board for its interpretation.

Finally, be advised that other than the aforementioned rules on alcohol advertising generally, there is nothing in the Liquor Code or the Board's Regulations that would specifically prohibit advertisement of free alcohol on particular websites.

If you have any further questions or concerns regarding this matter, 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,
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