

May 16, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Terry Neuman

Re: Free Alcohol Hotel Promotion

Dear Mr. Neuman:

ISSUE: This office is in receipt of your e-mail of April 10, 2014, in which you state that you have a client who holds a hotel liquor license who is considering a “Discover Pittsburgh” promotional package and would like to include a free drink for any customer who takes a picture of themselves with a puppet and posts the picture on Facebook. You have researched section 13.53 of the Board’s Regulations, section 5.32 of the Board’s Regulations, and section 493(24) of the Liquor Code. You inquire whether the free alcohol hotel promotional package would be permissible.

OPINION: With regard to free alcohol, section 13.53 of the Board’s Regulations allows a retail licensee 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. [40 Pa. Code § 13.53]. A standard-sized alcoholic beverage is 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, if your promotion consists of providing a free drink to any person who takes a picture with a puppet and posts it on Facebook, such a free alcohol offering would be permissible, 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.

Be further 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)].

Discounts by retail licensees must fall within one (1) of two (2) daily discounts. The Liquor Code and the Board's Regulations provide that retail licensees may offer a happy hour and a daily drink special each day. [40 Pa. Code § 13.102].

Your client should also note the happy hour requirements. 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 requires notice of all happy hours to be posted on premises seven (7) days prior to the happy hour. [47 P.S. § 4-406(g)].

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.*].

Permissible daily beer specials would be "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 discounts 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)].

Additionally, free alcohol and discounts may not involve any unlawful discrimination. The Pennsylvania Human Relations Act ("PHRA") prohibits discrimination on the basis of race, color, familial status, religion, ancestry, disability, age, sex, and other protected classes. [43 P.S. § 951, *et seq.*]. This office is not authorized to opine as to whether particular conduct would violate the PHRA. You may wish to contact the Pennsylvania Human Relations Commission ("PHRC") regarding PHRA, at (717) 787-4410 or www.phrc.state.pa.us.

Finally, regarding your inquiry as to section 5.32 of the Board's regulations [40 Pa. Code § 5.32], please be advised that if this promotion is available to all customers it would not be considered a "contest."

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

LCB Advisory Opinion No. 14-226