

May 29, 2014

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Kevin Vance

VIA E-MAIL: kgv5014@gmail.com

RE: Confiscating Fake Identification Cards

Dear Mr. Vance:

ISSUE: This office received your e-mail dated May 9, 2014, wherein you ask whether a licensed establishment has the right to hold a suspected fake identification (“ID”) card without verifying the information with the police. You also inquire whether you are required to accept other documentation, such as a birth certificate or social security card, as verification of the information on the suspected fake ID card. Finally, you ask if you may retain the ID card until you receive police verification or indefinitely if no police verification is required.

OPINION: Please be advised that neither the Liquor Code nor the Pennsylvania Liquor Control Board’s (“Board”) Regulations address confiscation of a suspected fake ID. However, licensees are advised to utilize the F.E.A.R. method of carding, which requires the licensee to have the identification in their actual possession while checking it. F.E.A.R. is an acronym for feel, examine, ask, return or refuse. If the ID is suspect, the licensee should advise the presenter that the licensee intends to contact the police to have it checked. Often times, the presenter will abandon the ID. At no time, however, should the licensee willingly keep the ID because the ID is not the property of the licensee. Suspected fake IDs which are abandoned using the F.E.A.R. method should be immediately turned over to local or state police.

Further, be advised that since the suspected fake ID is not the property of the licensee, confiscation of a suspected fake ID by the licensee could involve civil or criminal liability. Therefore, you are advised to consult with a private attorney.

Regarding the acceptance of other documentation, such as a birth certificate or social security card, initially, be advised that nothing in the Liquor Code or the

Board's Regulations requires patrons to possess valid ID while on licensed premises. However, section 493 of the Liquor Code states that licensees are strictly liable for service to visibly intoxicated persons and minors, including minors who may be on licensed premises with a parent, legal guardian, or under proper supervision. [47 P.S. § 4-493(1)]. Verifying the age of a patron by checking ID each and every time a patron is in the licensed establishment helps to ensure that a licensee will not be in violation of the law. Although "carding" is not required, there is nothing in the Liquor Code or the Board's Regulations which prohibits a licensee from instituting certain house rules of carding persons as long as those rules are not based upon illegally discriminatory reasons, such as race, gender, or religion.

Section 495(a) of the Liquor Code makes it clear that a valid photo driver's license or ID card issued by the Pennsylvania Department of Transportation or by any other state, a valid United States Armed Forces ID card, or a valid passport or travel visa issued by the United States or a foreign country that contains the holder's photograph, are all acceptable as ID cards for purposes of defending a citation involving service to minors. [47 P.S. § 4-495(a)]. Subsections 495(e) and (f) of the Liquor Code also provide that no penalty shall be imposed on a licensee or its employees for serving alcohol to a minor if the licensee or employee can establish to the satisfaction of an Administrative Law Judge that the minor was required to produce an ID card, as described above; the minor completed and signed a declaration of age card or a photograph, photocopy, or other visual or video presentation was made of the form of ID; and these documents were relied upon in good faith. This defense applies to all civil and criminal prosecutions. [47 P.S. § 4-495(e)-(f)].

Further, section 495(g) of the Liquor Code provides that no penalty shall be imposed on a licensee for a citation for sales to minors if a licensee or licensee's employees can establish to the satisfaction of an Administrative Law Judge that the minor was required to produce one (1) of the authorized ID cards, and the ID was scanned by a transaction scan device and was found to be valid, and the result was relied upon in good faith. A "transaction scan device" is defined as a device capable of deciphering, in an electronically readable format, the information encoded on the magnetic strip or bar code of an ID card. [47 P.S. § 4-495(g)].

Notwithstanding the actual validity of any form of acceptable ID, a licensee may still refuse service to anyone suspected to possess a false or invalid ID. There is nothing in the Liquor Code or the Board's Regulations which prohibits a licensee

from instituting certain house rules regarding ID checks as long as those rules are not based upon illegally discriminatory reasons, such as race or religion. Therefore, there is nothing in the Liquor Code or the Board's Regulations that would require you to accept other documentation, such as a birth certificate or social security card, as verification of the information on the ID card.

Should you have any additional questions, do not hesitate to 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

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