

July 7, 2014

Telephone: (717) 783-9454

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Judd Goodman
Federal Taphouse Harrisburg

RE: Beer Auction at Restaurant

Dear Mr. Goodman:

ISSUE: This office is in receipt of your e-mail of June 8, 2014, in which you indicate that your restaurant would like to auction off an unspecified number of individual rare bottles of beer that you lawfully obtain from your licensed Pennsylvania distributor. It will be presumed for purposes of this response that the “rare beers” that are the subject of the auction are not beers that are typically available for purchase in your licensed establishment. By definition, you are only able to purchase from your distributor full cases of any such “rare beers,” and not individual bottles. It is further presumed for purposes of this correspondence that the “rare beers” are lawfully brand-registered as required.

You note that the auction would only be for bottles of beer, available for take-out if warranted. Further, there would be reserve prices on the bottles, with any excess payment being donated to an unnamed charity. In this manner, you will be collecting the same base price for each bottle of the same beer; any amounts bid over the reserve will be donated to charity and not retained by your establishment.

You have three (3) questions regarding this event:

- 1) Is an auction classified as a contest within the Liquor Code?
- 2) Is it legal for you to auction off the beer as described?
- 3) Are there price limits that an auction would have to set?

Your questions will be answered in the order asked.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Brubar Inc. is the holder of Restaurant Liquor License No. R-15865 (LID

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48415), for use by it at the premises located at 228 – 234 North Second Street, Harrisburg, Pennsylvania.

OPINION: Board Regulation 5.30 defines event/tournament/contest as “a competitive endeavor involving skill, speed, strength or endurance. The term includes a competitive endeavor involving physical attributes of contestants.” [40 Pa. Code § 5.30]. In response to your first question, therefore, an auction of beer would not be considered a “contest.”

In response to your second question, there is nothing in the Liquor Code or Board’s Regulations that would prohibit the auctioning by a licensee of beer lawfully procured, i.e., it was acquired from the distributor or importing distributor authorized to sell that beer to you pursuant to its applicable territorial agreement. This would be true regardless of whether this beer would subsequently be consumed on the licensed premises or removed for off-premises consumption. A caveat is that restaurant licensees are limited to sales of malt or brewed beverages for off-premises consumption 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].

The following considerations may be applicable if you have a particularly active auction participant who purchases a large quantity of beer. It is permissible for a licensee to sell to a patron up to one hundred ninety-two (192) fluid ounces for off-premises consumption, and then to make a subsequent sale of up to one hundred ninety-two fluid (192) ounces for off-premises consumption within a relatively short period of time for this same patron, so long as these transactions constitute two (2) separate sales.

“Sale” is defined in section 102 of the Liquor Code as including “any transfer of liquor, alcohol or malt or brewed beverages for a consideration.” [47 P.S. § 1-102]. This office has historically advised licensees that in order for transactions to consist of two (2) separate sales, payment and delivery of the alcohol from the first transaction must occur before the second transaction begins. Therefore, in order for two (2) transactions to be considered separate sales, the first beer purchase must be removed from the premises before the second purchase is begun.

In response to your third question, it is not clear what you are asking. If you are referring to the prize limitations for events, tournaments and contests as set forth in section 5.32 of the Board’s Regulations, [40 Pa. Code § 5.32(f)(7)], then please be

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advised that these “prize limitations” would not apply since it has been determined that the auction does not fit the regulatory definition of “events, tournaments and contests.” [40 Pa. Code § 5.30].

If you are referring to the Liquor Code and Board Regulations pertaining to discount pricing practices, these would only be implicated if identical bottles of beer are auctioned off at different prices. Such would not be permissible since it would involve a pricing structure under which the price of a particular item changes, in violation of 40 Pa. Code § 13.102(a)(4). If your third question refers to something else, then please feel free to again contact this office for clarification.

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. 14-400