

July 21, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Ryan Fuller

RE: Employee Discount

Dear Mr. Fuller:

ISSUE: This office is in receipt of your e-mail dated June 27, 2014, in which you indicate that you have a Performing Arts Facility (“PAF”) licensee. You ask if it is permissible to offer a twenty-five (25%) percent employee discount on alcohol served at the bar.

OPINION: It is unlawful to offer a twenty-five (25%) percent employee discount on alcohol. It is only permissible for retail liquor license holders to discount alcoholic beverages in accordance with section 406 of the Liquor Code and the Board’s discount pricing practice regulations. [47 P.S. § 4-406; 40 Pa. Code § 13.102]. Those regulations provide that, each day, retail licensees may have a daily drink special and a happy hour. [40 Pa. Code § 13.102].

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.].

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)].

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)].

If you intend to offer an employee discount, it would have to comply with and be incorporated within the aforementioned guidelines, specifically available to all patrons, and restricted to being sold prior to midnight. Alternatively, licensees are allowed to provide one free alcoholic drink to consumers provided that the offering is not contingent on an alcohol purchase. [40 Pa. Code § 13.53]. One drink is defined as twelve ounces of malt or brewed beverages, four ounces of wine, or one and a half ounces of liquor. Such offerings can be limited to specific groups such as your employees who are not currently providing alcohol to patrons. Only one such drink may be provided per day per customer.

If you have any further questions or concerns regarding this matter, the Liquor Code or the Board’s Regulations, please do not hesitate 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

LCB Advisory Opinion No. 14-431