

August 19, 2014

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**RE: Labatt Charitable Fundraising Program**

Dear Mr. Simoni:

ISSUE: This is in response to your e-mail sent July 15, 2014, wherein you ask about a proposed charitable fundraising program whereby Labatt would create donation cards depicting both the Labatt logo as well as that of a designated charity that has not yet been determined. The donation cards would then be provided to distributors and wholesalers, who would then distribute the cards to retailers throughout Pennsylvania. Donors would decide the amount of their contributions, and would then have the option to write their name on the donation card, which would be displayed somewhere in the retail establishment for the duration of the fundraising program. You advise that the distributors and wholesalers would be responsible for collecting the donations from the retailers at the conclusion of the program. Labatt would collect the donations from the distributors and wholesalers, and then give all of the donated funds directly to the designated charity. It is presumed, because you did not specify such criteria in your proposal, that the donation cards would be made available to all retail customers, and not just those purchasing a Labatt product.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Labatt USA Operating Company, LLC, of Buffalo, New York, holds Vendor Permit VP-766 (LID 62858).

OPINION: In Pennsylvania, the advertisement of alcoholic beverages is generally governed by section 498 of the Liquor Code [47 P.S. § 4-498]. Pursuant to section 498, manufacturers, wholesalers, retailers and shippers, whether from outside or

inside the Commonwealth, and any licensees are permitted to advertise their products and prices in Pennsylvania, subject to certain restrictions. [47 P.S. § 4-498(a)] The term “advertisement” is defined as “any advertising of alcoholic beverages through the medium of radio broadcast, television broadcast, newspapers, periodicals or other publication, outdoor advertisement, any form of electronic transmission 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)]. This office has historically held that material is considered an advertisement if it mentions the price or availability of alcohol. Your donation program and donation cards, as you have described them, would not constitute advertisements and would thus not be subject to the rules set forth in section 498 of the Liquor Code [47 P.S. § 4-498]. Therefore, the program and donation cards are permissible, insofar as they are not advertisements under the Liquor Code.

Please be advised that section 493(22) of the Liquor Code provides that it is unlawful for a licensee to “offer, pay, make or allow, or for any licensee...to solicit or receive any allowance or rebate, refunds or concessions, whether in the form of money or otherwise, to induce ... the purchase liquor or malt or brewed beverages.” [47 P.S. § 4-493(22)]. Thus, a donor’s participation in this program could neither be contingent upon his/her purchase of alcohol, nor limited to the purchase of a Labatt product.

Section 13.51 of the Board’s Regulations provides that no licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device for any purpose. [40 Pa. Code § 13.51]. Therefore, it is imperative that no retail licensee receive anything of value from this program. Labatt must ensure that all monies received as donations are channeled back to the charity, as any monies retained by the retailers, distributors, or wholesalers would be considered benefits imparted upon another class of licensee, and thus impermissible under the Liquor Code.

By way of suggestion, there is nothing in the Liquor Code that would prohibit Labatt from making its own donation to a designated charity, and advising consumers of its support in advertising materials (subject to the aforementioned restriction on advertisements, generally). Labatt could also communicate with its

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distributors and retailers to encourage implementation of their own donation programs to benefit the designated charity, subject to the Liquor Code and Board's Regulations on charity events and fundraisers.

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. 14-463