

August 15, 2014

Telephone: (717) 783-9454

FAX: (717) 787-8820

Linda Nyman
Marketing Director
Penn Brewery
800 Vinial Street
Pittsburgh, PA 15212

RE: Penn Brewery Rewards Program

Dear Ms. Nyman:

ISSUE: This correspondence is in response to your e-mail of July 29, 2014, in which you ask for legal review of a proposed customer rewards program. Specifically, you ask whether a patron may order alcoholic beverages as part of a meal, which has been purchased by the patron using rewards points.

Points may be earned through the purchase of food and non-alcoholic beverages at Penn Brewery. For each dollar spent, before tax and gratuity, customers will earn one (1) rewards point. The points will accumulate in a personal online account and, once redeemed, will function as a gift certificate.

According to the summary you provided, participants may choose from the following rewards: a buy-one-get-one-free lunch coupon, a buy-one-get-one-free dinner coupon, a gift card valued at twenty-five dollars (\$25.00), a voucher for dinner for two (2) at the brewery pub, two (2) tickets to the Annual Pennsylvania Microbrewers' Fest at Penn Brewery, two (2) tickets to attend the "Penn Brew U" event in which attendees learn about pairing food with beer and enjoy a beer-themed lunch with beer samples, a voucher for a private brewery tour for up to ten (10) people, a voucher for a beer-pairing dinner for two (2) including a four (4)-course meal with a beer accompanying each course, a voucher for a private happy hour for ten (10) people, a voucher for a private dinner for two (2) with a Penn brewer, and a voucher to join the Penn brewers at work.

OPINION: Initially, please note that section 493(24)(i) of the Liquor Code provides, in pertinent part, that it shall be unlawful for:

any licensee under the provisions of this article, or the board or any manufacturer, or any employee or agent of a manufacturer, licensee or of the board . . . to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define.

[47 P.S. § 493(24)(i)].

The above provision prohibits the awarding of points to patrons based upon the purchase of alcoholic beverages, since such could be construed as an inducement to purchase alcohol. Since the rewards points in your proposed customer loyalty program may only be earned via the purchase of non-alcoholic items and food, it does not violate section 493.

In response to your specific question, a point system which establishes an alternate method for paying for food and even alcoholic beverages is permissible; however, it must be in conformity with the Board's Regulations pertaining to discount pricing practices and free drinks.

Brewery pub licensees are subject to the same rights and conditions as malt and brewed beverage retail dispenser licensees. [40 Pa. Code § 3.92(b)]. Pursuant to section 13.53 of the Board's Regulations [40 Pa. Code § 13.53], a retail licensee is permitted 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. A standard-sized alcoholic beverage means 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, it would be permissible to give one (1) free beer to each person, so long as the drink is limited to one (1) such drink and consists of no more than twelve (12) fluid ounces.

As for discounted beverages, in each business day retail licensees may have only two (2) discount promotions: a daily drink special and a happy hour. [40 Pa. Code § 13.102].

Regarding happy hours, you are permitted to discount any or all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum fourteen (14) hours per week. [47 P.S. 4-406(g)]. During this time, the price of alcoholic beverages may not change. Further, the happy hour cannot extend beyond 12:00 midnight. [40 Pa. Code § 13.102(a)].

Regarding a daily drink special, you are permitted to offer one (1) specific type of alcoholic beverage at a discounted price all day, or for a portion of the day. [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.]. For example, a specific brand of beer such as “Blue Hound Pilsner” or “Brendan’s Cream Stout” or “Oil City Light,” may be discounted, but not “all draft” or “all bottled” beer or “all Blue Hound products.” Daily wine drink specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall wines.” Permissible spirits specials would be “Rum and Cola” or “all brandy drinks,” but not “all well drinks” or “all Jackson’s products.” [See Board Advisory Notice No. 16]. Like a happy hour, a daily drink special must end by midnight; there can be no discounting of alcoholic beverages between midnight and 2:00 a.m.

Further, food may not be discounted as part of a package with alcoholic beverages because it would violate the Liquor Code provision that prohibits giving something of value to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(j)]. Alcohol may only be discounted as part of a food package if it is done in conformity with a discount pricing promotion discussed above.

Therefore, while you may establish a reward credit system under which the person purchasing a meal with alcohol uses points rather than cash, it would be incumbent upon you to establish that the points used to acquire alcoholic beverages would be equivalent to the cash price.

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

Linda Nyman
August 15, 2014
Page 4

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
Dale Horst, Interim Director of Marketing and Merchandising
Michelle Bonsick, Director, Bureau of Marketing Communications,
Branding & Design
Pamela Bernd, Product Selection

LCB Advisory Opinion No. 14-465