

August 19, 2014

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Raymond Rockey  
The Brewery, Inc.  
esammy@aol.com

**RE: Clarification of Bottle Service**

Dear Mr. Rockey:

ISSUE: This office is in receipt of your e-mail, dated July 24, 2014, wherein you state that you are the manager at The Brewery, Inc., in State College. You have been approached by a company about the purchase of an entire barrel of Knob Creek Single Barrel which the company will place in bottles to be purchased through the special liquor order (“SLO”) program. There will be spaces on the label with your bar’s name. You pose several questions in setting up such a program, specifically regarding charges to patrons who purchase the entire bottle, pricing differentials of single shots to entire bottles, display/storage of the bottles, personal labels and bar name imprints on the bottles, and the disposal of the bottles. Once the bottles have been emptied, can they be given to patrons as mementos?

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that The Brewery, Inc. holds Restaurant Liquor License No. R-19792 (LID 31167) for premises located at 233 East Beaver Avenue (basement), State College, Pennsylvania.

OPINION: There is nothing in the Liquor Code that limits the quantity of liquor that a licensee may sell in a single purchase for consumption on the licensed premises. Accordingly, a restaurant licensee may sell whole bottles, regardless of size, to patrons. Although it is lawful to sell a full bottle of spirits to a patron, unlike wine which can be re-corked and taken off premises when purchased as part of meal, the bottle of spirits cannot be taken off premises. [47 P.S. § 4-406(e)] Under the Liquor Code, only the Board, limited distilleries, distilleries, and distilleries of historical significance are afforded the statutory ability to operate as a direct retailer of spirits to consumers for off-premises consumption. Restaurant liquor licensees do not have this ability. Accordingly, the patron must either finish the entire bottle or leave the bottle on premises to be consumed upon his/her return.

Please be advised that, as a licensee, you will still be held strictly liable for any violations of the Liquor Code or the Board’s Regulations (including providing alcohol to minors or

persons who are visibly intoxicated) that occur on your premises even after a bottle is sold to a customer. [47 P.S. § 4-493(1)].

You may sell liquor by the whole bottle using a calculation of the “per shot” price times the number of shots contained in the bottle, or you may use a set list price for the bottle. Such a set list price for a bottle would have to be a regular retail price and not an advertised discount price or it would be considered as one (1) of the two (2) daily discounts permissible to licensees under the Regulations. Please note that any bottle service must take care to avoid running afoul of rules regarding discount pricing. 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 respect to daily drink specials, a retail 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. [40 Pa. Code § 13.102(b)(2)]. A specific type of alcoholic beverage means a specific registered brand of malt or brewed beverage, a type of wine, a type of distilled spirits or a mixed drink. [Id.]. 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’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].

With regard to happy hour pricing, a retail licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed four (4) consecutive or non-consecutive hours, and not to exceed fourteen (14) hours per week. [47 P.S. §§ 1-102, 4-406(g)]. During such happy hours, the price of alcoholic beverages may not change. The hours need not be consecutive and may be divided, subject to the above noted limitation, in any manner a licensee desires. However, please note that no discount pricing practice (daily drink special or happy hour) may occur between 12:00 midnight and the legal closing hour. [40 Pa. Code § 13.102]. Please be advised that a notice of all happy hours must be posted on the licensed premises seven (7) days prior to each happy hour. [Id.].

Section 13.102(a)(2) of the Board’s Regulations [40 Pa. Code § 13.102(a)(2)] prohibits retail licensees from selling and/or serving an increased volume of one (1) drink of liquor, wine or malt or brewed beverages without a corresponding and proportionate increase in the price for the drink. Therefore, it is impermissible to sell and/or serve a larger-sized drink of liquor, wine or malt or brewed beverages at the same price as, or at a price which does not include a corresponding and proportionate increase in, the price of a

smaller-size drink of the same type. Nothing in the Liquor Code or the Board's Regulations, however, would prohibit a retail licensee from selling a bottle for a price different than that which would equal the price charged for an individual serving or for requiring payment in increments of use as you described.

Sections 401(a) and 403(a) of the Liquor Code [47 P.S. §§ 4-401(a), 4-403(a)] grant authority to restaurant liquor licensees to store alcoholic beverages on the licensed premises. Note, however, that such storage must be in areas designated as part of the licensed premises. [See also 47 P.S. § 5-501; 18 Pa. C.S. § 7327]. Thus, as long as the area you wish to use for storage purposes has been specifically identified, reported to the Pennsylvania Liquor Control Board's Bureau of Licensing ("Licensing"), and approved by Licensing as a storage area for alcohol, you may use it. Once approved, wine, liquor, and beer may be stored in the same room, with or without other inventory. There is no specific requirement that the storeroom be kept locked during the day or at any other time.

Additionally, there is nothing in the Liquor Code which precludes a licensee from temporarily storing alcohol that belongs to another entity. While there are provisions in the Crimes Code pertaining to when storage of alcohol may occur on unlicensed premises, those provisions do not apply to licensed premises. Therefore, it would be permissible for the bourbon in question to be stored on a temporary basis at your licensed premises so long as the storage is of a temporary duration and there is no fee collected by you for this service. These arrangements are a matter of contract law between the licensee and the patron and are not regulated by the Board. Further, there is nothing in the Liquor Code or Board Regulations that would prohibit a licensee from selling a bottle of bourbon to be tagged for a specific patron and stored at the premises for consumption at a later date. Please note that if you wish to charge customers for storage of these bottles, you would be required to obtain a bailee-for-hire license from the Board. Please contact the Board's Bureau of Licensing at (717)783-8250 if you have any questions obtaining a bailee-for-hire license.

With respect to the inclusion of your name on the label, be advised that section 13.51 of the Board's Regulations [40 Pa. Code § 13.51(a)] prohibits licensees from giving anything of value by means of advertisement, contributions, etc. to other licensees of a different class. [See also 47 P.S. § 4-443]. The term "advertisement" includes advertising of alcoholic beverages through the medium of printed or graphic material, including those on the product label or attachment itself. [47 P.S. § 4-498(g)]. These sections, however, do not prohibit manufacturers from incorporating a retailer's name or business logo on the manufacturer's labels or packaging as long as the retailer pays its fair market value share of the advertising. Cooperative advertising is permitted under these circumstances. Be aware, however, that federal alcohol regulations prohibit certain forms

of joint or cooperative advertising, and have certain labeling requirements, so you may wish to contact TTB for additional clarification, or visit its website at [www.ttb.gov](http://www.ttb.gov).

In regard to the disposition of empty bottles, section 491(5) of the Liquor Code currently requires licensees “to break any package in which liquor is contained, other than those decanter packages that the Board determines to be decorative, within twenty-four (24) hours after the original contents have been removed therefrom, unless the licensee participates in either a municipal recycling program or a voluntary recycling program.” [47 P.S. § 4-491(5)]. Accordingly, you, as a licensee, would be unable to give the bottles to your patrons as mementos; however, patrons would be able to keep the bottles if they purchased them as part of a meal.

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

LCB Advisory Opinion No. 14-473