

December 2, 2014

Andrew D. Santana  
Fox Rothschild LLP  
300 Sentry Parkway East, Suite 200  
Blue Bell, PA 19422-3001

**RE: Themed Service Area**

Dear Mr. Santana:

ISSUE: This correspondence is in response to your e-mail of October 24, 2014, wherein you request an advisory opinion, on behalf of your client, Chester Downs and Marina, LLC, trading as Harrah's Chester Casino & Racetrack ("Licensee"), regarding the legality of a proposed business arrangement, as described below.

According to the description you provided, Licensee intends to redesign and rebrand a portion of its licensed premises ("the branded bar"). The Boston Beer Company, Inc. ("Sam Adams") will participate in the development of the branded bar, which will bear the name "Samuel Adams Bar." Licensee will be solely responsible for the design, construction, and cost of the branded bar. The branded bar, as well as its menus, signage, furniture, and uniforms, will bear the name, logos, and other trade dress of Sam Adams and its products. Sam Adams will provide all branded items to Licensee free of charge. Licensee will offer various alcoholic beverages at the branded bar; Sam Adams products will not be discounted, promoted, advertised, or otherwise preferred by Licensee.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Chester Downs and Marina, LLC, holds Restaurant Liquor License No. R-21484 (LID 56931) for use at the premises located at 777 Harrahs Boulevard, Chester, Pennsylvania.

OPINION: In general, the Board's Regulations prohibit a licensee of one class, such as a manufacturer, from providing anything of value to a licensee of another class, such as a restaurant liquor licensee. Specifically, subsection 13.51(a) provides:

Except as provided herein and in § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, 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(a)].

In addition to prohibiting things of value being exchanged between licensees of a different class, the Liquor Code provisions on interlocking business practices provide, in pertinent part:

Excepting as hereinafter provided, no malt or brewed beverage manufacturer . . . shall in any wise be interested, either directly or indirectly, in the ownership or leasehold of any property or in any mortgage against the same, for which a liquor or retail dispenser's license is granted; nor shall any such manufacturer . . . , either directly or indirectly, lend any moneys, credit or equivalent thereof to, or guarantee the payment of any bond, mortgage, note or other obligation of, any liquor licensee or retail dispenser, *in equipping, fitting out, or maintaining and conducting, either in whole or in part, an establishment or business operated under a liquor or retail dispenser's license . . . .*

[47 P.S. § 4-443(d) (emphasis added); see also 47 P.S. § 4-411(c)]. To be clear, the legislature stated that its purpose in enacting the interlocking business prohibition was “to require a separation of the financial and business interests” between licensees of different classes. [47 P.S. § 4-443(g)]. Licensees, as well as their officers, directors, stockholders, servants, agents, and employees, are further prohibited from engaging in any business which involves the sale of any equipment, furnishings, or fixtures to any hotel, restaurant, or club licensees. [47 P.S. § 4-493(17)].

Based on the information you provided, it appears the proposed venture would be prohibited under the above provisions pertaining to interlocking businesses and licensees engaged in the sale of equipment/fixtures. While this office historically has approved cooperative advertising between beer manufacturers or distributors

and retail licensees, so long as each party pays its proportional, fair-market-value share for the cost of the advertisement, the proposed branded bar clearly involves an arrangement more akin to an interlocking business venture than a mere shared advertisement. Moreover, the provision of branded equipment and furnishings by Sam Adams to Licensee for use in the branded bar would be unlawful under the interlocking business prohibition as well as the Board's Regulations.

Nonetheless, it is worth noting that some aspects of the proposed branded bar could be permissible under limited exceptions to the aforementioned rules. Subsection 493(24)(i) of the Liquor Code, which prohibits things of value being offered as an inducement, provides an exception in that advertising novelties of nominal value may be distributed by manufacturers or any class of licensee to trade or consumer buyers. [47 P.S. § 4-493(24)(i)]. Advertising novelties include matches, disposable lighters, bottle or can openers, caps, t-shirts, recipe pamphlets, pens, corkscrews and ashtrays, which bear advertising matter and which have a wholesale cost of fifteen dollars (\$15.00) or less. [40 Pa. Code § 13.52(c); Advisory Notice No. 10 (6<sup>th</sup> Revision)]. Advertising signs for exterior use are also considered advertising novelties if they conspicuously advertise the alcoholic beverage products sold by the licensee or the name of the manufacturer of alcoholic beverage products sold by the licensee. [40 Pa. Code § 13.52(d)]. Signs for interior display are not subject to the advertising novelty cost limit, but are subject to the point-of-sale advertising cost limit as set by the Board in its Advisory Notice No. 10 (6<sup>th</sup> Revision). [40 Pa. Code § 13.52(e)]. However, the Pennsylvania Race Horse Development and Gaming Act exempts slot machine licensees from the cost and total display area limitations of the Liquor Code. [4 Pa.C.S.A. § 1521(c)].

Please note that advertising novelties may *not* be used as equipment by any hotel, restaurant, club, retail dispenser, importing distributor or distributor licensee. [40 Pa. Code § 13.52(c)]. However, licensees may sell glasses at not less than cost and provide metal keg connectors and tap knobs to other licensees and to holders of special occasion permits, despite the general prohibition on licensees selling equipment. [47 P.S. § 4-493(17)]. Also, manufacturers or importers may furnish, give, rent, loan or sell to retail licensees wine lists or menus, which may involve cooperative endeavors related to cost sharing and advertisement between manufacturers and retail licensees. [40 Pa. Code § 13.52(c)].

Finally, you may also wish to contact the Alcohol and Tobacco Tax and Trade Bureau regarding any federal laws applicable to your proposed endeavor.

Please do not hesitate to contact this office again, should you have any further questions.

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. 14-606