

March 26, 2015

Steve Martin

RE: Free Gift Cards

Dear Mr. Martin:

ISSUE: This correspondence is in response to your e-mail of February 25, 2015, wherein you ask whether it is permissible for a licensed restaurant to give away free gift cards that may be used for alcoholic beverages. You identify yourself as the manager of a restaurant and bar and state that you would like to give customers a gift card, with a value between ten dollars (\$10.00) and twenty dollars (\$20.00), as compensation in the event a customer expresses dissatisfaction with the food or service at the establishment.

OPINION: As you are aware, subsection 493(24)(i) of the Liquor Code prohibits the giving of something of value to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(24)]. This office has long interpreted this provision to prohibit licensees from giving away for free, or selling at a discount, gift cards which are redeemable for alcoholic beverages, because to do so would be an unlawful inducement. Free or discounted gift cards may only be used on food and non-alcoholic beverages.

Moreover, the offering of a free gift card redeemable for alcoholic beverages would be problematic under the discount pricing practices permitted by the Liquor Code and the Pennsylvania Liquor Control Board (“Board”) Regulations.

In each business day, retail licensees may engage in the following discount pricing practices, as permitted by section 13.102 of the Board’s Regulations: a daily drink special and a happy hour. [40 Pa. Code § 13.102]. No discount pricing may occur between 12:00 a.m. (midnight) and the legal closing hour (i.e. 2:00 a.m. for most retail licensees). [40 Pa. Code § 13.102(a)].

Regarding 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 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.” [See Board Advisory Notice No. 16 (Amended)].

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); 40 Pa. Code § 13.102(a)]. The hours may be fixed, subject to the above noted limitations, in any manner a licensee desires; however, during a happy hour, the price of alcoholic beverages may not change. [40 Pa. Code § 13.102(a)(4)]. Notice of all happy hours must be posted on the licensed premises seven (7) days prior to each happy hour. [47 P.S. § 4-406(g)].

In addition, please note that 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. [40 Pa. Code § 13.53]. A standard-sized alcoholic beverage means twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), or one and one half (1.5) fluid ounces of liquor. [*Id.*].

If a licensee were to offer a free or discounted gift card that is redeemable for alcoholic beverages, it would essentially mean that the licensee would be discounting alcoholic beverages in a manner inconsistent with the above practices, which are the only alcoholic beverage discounts permitted by the Liquor Code and the Board’s Regulations. Therefore, any free gift card given to a customer must be limited in its use to only food and non-alcoholic beverages.

Should 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. 15-103