

March 24, 2015

Scott Choura
General Manager
Lake Arthur Golf Club

E: Advertising Free Alcoholic Beverages

Dear Mr. Choura:

ISSUE: This is in response to your e-mail dated February 11, 2015, wherein you indicate that your golf club is considering offering golfers one (1) free drink for being part of a golfer loyalty program. You explain that golfers would not be required to pay to participate in the loyalty program. You indicate that you are already aware that retail licensees are permitted to offer one (1) free drink per customer per day. However, you request guidance as to if and how free drinks may be lawfully advertised.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Lake Arthur Country Club, Inc., holds Restaurant Liquor License No. R-20507 (LID 21004) for use at the premises located at 255 Isle Road, Butler, Pennsylvania.

OPINION: As you are already aware, retail licensees of the Board are permitted, during the course of a business day, to give to or purchase for consumers, one (1) standard-size alcoholic beverage in retail licensed premises, provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverages and is limited to one (1) standard-sized alcoholic beverage per patron in any such offering. [40 Pa. Code § 13.53]. A standard-size alcoholic beverage is twelve (12) fluid ounces of a malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine) and one and one-half (1½) fluid ounces of liquor. [40 Pa. Code § 13.53]. Moreover, there is no requirement that all patrons be offered a free alcoholic beverage. Accordingly, it would be permissible to limit the offering of a free alcoholic beverage, as described above, to golfers participating in the golfer loyalty program, provided that such offering is not based on an unlawful discriminatory basis, such as race, sex or gender, and provided that the golfers are twenty-one (21) years of age or older and not visibly intoxicated.

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. [47 P.S. § 4-498(a)]. Any advertisement of price may not contain: “[a]ny statement that is false, deceptive, or misleading”; “[a]ny statement that is disparaging of the products of a competitor”; or “[a]ny statement referring to monetary comparison between brands.” [47 P.S. § 4-498(b)]. Prices that are advertised or displayed on licensed premises must be the prices that are in effect at the time of the advertisement or display. [47 P.S. § 4-498(c)].

Moreover, for all alcoholic beverage and malt beverage advertising, the following conditions apply:

1. The entity responsible for the advertisement must be clearly identified in the advertisement.
2. No licensee may distribute, by mail, personally or through servants, agents or employees, price lists, circulars or handbills off the license premises to the general public as a means of advertising liquor, wine or malt or brewed beverages.
3. No print advertisement of alcoholic beverages of any type shall be permitted within three hundred feet of any church, school or public playground. This prohibition shall not preclude any point of sale advertisement, menus or other print advertisement regarding alcoholic beverages inside the licensed premises.
4. The use in any advertisement of alcoholic beverages of any subject matter, language or slogan directed to minors to promote consumption of alcoholic beverages is prohibited. Nothing . . . shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.
5. No advertisement shall be permitted, either directly or indirectly, in any booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or on behalf of any educational institution.
6. No advertisement that is obscene shall be permitted; and
7. Advertisement of alcoholic beverages and malt and brewed beverages shall not be inconsistent with the spirit of safety or safe driving programs.

[47 P.S. § 4-498(e)-(f)]. 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)].

As indicated above, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution. However, you may wish to consult the decision in Pitt News v. Pappert, which held section 498 of the Liquor Code unconstitutional as applied to The Pitt News. [Pitt News v. Pappert, 379 F.3d 96, 113 (3d Cir. 2004) (holding 47 P.S. § 4-498 unconstitutional, as applied)].

Also, while section 498(e)(2) of the Liquor Code prohibits the distribution by mail of price lists, circulars or handbills to the general public as a means of advertising liquor, wine or malt or brewed beverages [47 P.S. § 4-498(e)(2)], the Liquor Code does not define the terms “circular” or “mailing.” However, Webster’s II New College Dictionary (1999) defines “circular” as a “printed advertisement, directive or notice for mass distribution,” and “mailing” is defined as “a batch of mail sent at one time by a mailer.” For purposes of clarity and uniformity, the Board has interpreted the terms “circular,” “price list,” and “handbill” to mean any form of “unsolicited” advertising. Nevertheless, please note that the Pennsylvania Attorney General’s Office has determined that this prohibition does not prevent a licensee from advertising in a newspaper or community newspaper.

Additionally, please be advised that section 493(24)(i) of the Liquor Code prohibits licensees from offering or giving anything of value as a means to induce the purchase of alcoholic beverages, or from offering or giving to consumers any prize, premium, gift or other inducement to purchase alcoholic beverages, except advertising novelties of nominal value. [47 P.S. § 4-493(24)(i)]. The Board has defined advertising novelties of nominal value as items that have a wholesale cost of fifteen dollars (\$15.00) or less and contain advertising material. [40 Pa. Code § 13.52; Board Advisory Notice No. 10 (6th Revision)]. Advertising novelty giveaways may or may not be conditioned on the purchase of an alcoholic beverage.

Therefore, it would be permissible for your golf club to advertise the availability of free alcoholic beverages relative to the golfer loyalty program, as long as such advertisements comply with the restrictions set forth above.

Finally, please be advised that information relative to offering free alcoholic beverages and the advertising of alcoholic beverages is also available on the Board’s website, www.lcb.state.pa.us, by placing your cursor over “Legal,”

selecting the link for “Advisory Notices,” and then selecting the links for “Advisory Notice No. 10 – Trade Practices” and “Advisory Notice No. 15 – Advertising of Alcoholic Beverages in Pennsylvania” respectively.

If 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
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