

April 10, 2015

Dennis Benson
Chief Marketing Officer
Potomac Family Dining Group

Re: Happy Hour Clarification

Dear Mr. Benson:

ISSUE: This is in response to your e-mail of March 19, 2015, wherein you advise that you would like clarification as to the law regarding happy hour. You propose to have happy hour available Monday through Thursday from 4:00 p.m. to 7:00 p.m. You will be offering a variety of drinks at what are presumably discounted prices: domestic draft beer for \$3.50, premium draft beer for \$4.50, well drinks for \$3.00, house wines for \$4.00, Fireball Whiskey shots for \$3.00, and specialty drinks for \$4.00, as well as bar snacks for \$3.00.

You would like to display a banner outdoors with the following words printed on it: "Happy Hour 4pm-7pm Monday-Thursday featuring \$3.00 Bar Snacks." There will also be a picture of a plate of chicken wings on the banner. You advise that there will be an interior banner and table top communication listing the happy hour offers. You note that you are paying for all advertising materials without any vendor support. You ask this office to review your proposal and advise if the proposal complies with the law.

Records of the Pennsylvania Liquor Control Board ("Board") indicate Potomac Family Dining Group Operating Company LLC holds Restaurant Liquor License No. R-18270 (LID 64614) for the premises at 1050 Wayne Avenue, Chambersburg, Pennsylvania, and Restaurant Liquor License No. R-177 (LID 64619) for the premises at 12825 Washington Township Boulevard, Waynesboro, Pennsylvania.

OPINION: In accordance with the Liquor Code and the Board's Regulations, retail licensees are permitted to offer both a daily drink special and a happy hour in

each business day. [47 P.S. § 4-406(g); 40 Pa. Code § 13.102]. No other discount pricing practices are permitted.

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)].

Although your question was limited to happy hour, please be aware that some of the drink items on the list that you provided – such as the Fireball Whiskey Shot or the specialty drinks – may be suitable for a daily drink special. With regard 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 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)].

Further, please note that 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)].

Based on the information you provided, it appears that your happy hour proposal is in conformance with the above requirements, whether you decide to also have a daily drink special or to keep the happy hour offerings as you have proposed. Therefore, it would be permissible to offer the proposed happy hour in your licensed establishments.

Please note that the Liquor Code contains restrictions on certain advertising practices. Based upon the information you provided this office, the outdoor banner, indoor banner, and table top communications appear to be in compliance with the provisions of the Liquor Code, but please review the information regarding advertising that is provided herein.

Section 498(a) of the Liquor Code permits establishments, manufacturers and shippers to advertise their products and prices in the Commonwealth. [47 P.S. § 4-498(a)]. No advertisement of products or prices, however, may contain the following: (1) any statement that is false, deceptive or misleading; (2) any statement that is disparaging of the products of a competitor; and (3) any statement referring to monetary comparisons between brands. [47 P.S. § 4-498(b)(1)-(3)]. The entity responsible for the advertisement shall be clearly identified in the advertisement. [47 P.S. § 4-498(e)(1)]. No advertisement may use any subject matter, language or slogan directed to minors to promote the consumption of alcoholic beverages by minors. [47 P.S. § 4-498(e)(4)]. No advertisement that is obscene is allowed. [47 P.S. § 4-498(e)(6)]. Advertisements shall not be inconsistent with the spirit of safety or safe driving programs. [47 P.S. § 4-498(f)].

As to banners, section 498(e)(3) of the Liquor Code prohibits print advertisements of alcoholic beverages of any type within three hundred (300) feet of any church, school, or playground. [47 P.S. § 4-498(e)(3)]. Print advertisements prohibited within three hundred (300) feet of a church, school, or public playground include written advertisements on posted signs such as billboards or banners which advertise the availability or prices of alcoholic beverages. Outside advertisements simply indicating the name of the licensed establishment or the availability or prices of products other than alcoholic beverages are permitted regardless of the proximity of the banner to a church, school or playground.

Be advised that in the event that the banner is provided by a manufacturer or distributor, section 13.51 of the Board's Regulations [40 Pa. Code § 13.51] prohibits licensees of one (1) class from offering anything of value to, or accepting anything of value from, a licensee of another class. There is an exemption for advertising novelties of nominal value. [40 Pa. Code § 13.52]. "Nominal value" currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6th Revision)].

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once 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. 15-147