

April 17, 2015

Lisa Miller, Esquire

VIA E-MAIL: lmiller@skenelawfirm.com

Re: Sales of Six Packs by Restaurant Licensee

Dear Ms. Miller:

ISSUE: This office is in receipt of your e-mail correspondence of March 12, 2015, wherein you state that your office is seeking guidance in ascertaining a definitive answer to a question posed by a client. Your client holds a restaurant liquor license and requests information regarding the requirements and restrictions applicable to the sale of six (6)-packs of beer to go. Your understanding is that a restaurant liquor licensee is permitted to sell patrons beer in six (6)-packs to go. Assuming that is the case, you pose two (2) specific questions listed and answered below.

OPINION: Your understanding is correct; restaurant licensees are permitted to sell beer for off-premises consumption. Please note that retail license holders may only sell alcohol on the licensed portion of the premises. [47 P.S. §§ 1-102; 4-401(a); 4-492(3)-(4)]. Sales of beer for off-premises consumption must occur on the licensed premises. [47 P.S. § 4-492(2)]. Moreover, sales for off-premises consumption are limited to one hundred ninety-two (192) ounces of malt or brewed beverages in a single sale to one (1) person. [47 P.S. § 4-407(a)].

1. Is the licensee required to charge the same amount for a six (6) pack to go as it would charge for the six (6) individual beers in the restaurant?

No, the licensee is not required to charge the same amount for a six (6)-pack for off-premises consumption as the charge for six (6) individual beers consumed on premises, provided that there is no violation as to the discounting rules and there is no inducement to purchase the alcohol.

Neither the Liquor Code nor the Board's Regulations regulate the prices that licensees may establish as their regular prices for alcoholic beverages. Regular drink prices are those that are not discounted, and that

are regularly charged on a consistent basis. The Board does, however, regulate discount pricing practices.

Section 493(24)(i) of the Liquor Code prohibits any licensee of the Board to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverages, or for any licensee to offer or give to trade or consumer buyers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value (i.e., with a wholesale value of fifteen dollars (\$15.00) each or less). [47 P.S. § 4-493(24)(i)]. Accordingly, an advertised discount for purchasing more bottles of malt or brewed beverages would be a direct inducement for a consumer to purchase more of this product and to be permissible would have to adhere to the discounting pricing practices for licensees under section 13.102 of the Board's Regulations. [40 Pa. Code § 13.102].

Therefore, as discussed above, it would be permissible for a licensee to charge a regular price for a six (6)-pack of beer to go, which is less or more than the sum of the regular price of six (6) individual bottles of beer. However, please note that the regular price charged for the six (6)-pack to go must be the same price charged for the same six (6)-pack that is not being sold to go.

- 2. Is the licensee permitted to include beer with delivery to go orders? If so, are there any additional requirements or restrictions applicable to the delivery driver or must he/she just be eighteen (18) years of age as would be required for regular carryout sales made in the restaurant?**

A retail license does not authorize the licensee to deliver alcohol. If the holder of a restaurant liquor license would like to deliver alcohol for off-premises consumption, the licensee must also acquire a transporter-for-hire license. Section 501 of the Liquor Code requires a license issued by the Board in order to transport-for-hire any alcoholic beverages within the Commonwealth. [47 P.S. § 5-501].

There is nothing in the Liquor Code that prohibits a retail licensee from applying for or holding a transporter-for-hire license. However, be advised that it is the Board's Bureau of Licensing ("Licensing") initially, and the

three (3)-member Board ultimately, that decide whether to grant a particular license application.

There are three (3) types of transporter-for-hire licenses issued by the Board. The transporter-for-hire Class A license authorizes the holder to engage in the commercial transportation of liquor, malt or brewed beverages or alcohol to or from points located in the Commonwealth. A transporter-for-hire Class B license allows the holder to engage in the commercial transportation of malt or brewed beverages only to or from points located in the Commonwealth. A transporter-for-hire Class C license is a fleet license that authorizes the holder to engage in the commercial transportation of liquor parcels within the Commonwealth. [40 Pa. Code § 9.11].

Attached to this response is Advisory Notice No. 22, which provides guidance on what activities are permissible for a retail licensee that holds a transporter-for-hire license. Also, Advisory Notice No. 22 can be found on the Board's website at www.lcb.state.pa.us by clicking [Pennsylvania Liquor Control Board Issues Guidelines Regarding Beer Delivery](#) under News and Announcements.

As to your specific questions, food and non-alcoholic beverages can be included with the delivery of malt or brewed beverages, but it is not required. Deliveries can only include items that are pre-ordered by the customer, so a licensed transporter cannot use his/her vehicle to sell other items with the alcoholic beverages at the same time. As to the transporter-for-hire delivery driver, the person making the delivery must be at least twenty-one (21)-years-old and there must be written evidence the driver is an employee or a contractor of the licensed transporter. [Advisory Notice No. 22].

Also, if your client obtains a transporter-for-hire license, he/she should also review the following other provisions of the Board's Regulations: section 9.13, dealing with records and reports for transporters-for-hire [40 Pa. Code § 9.13]; section 9.21, dealing with identification of cargo [40 Pa. Code § 9.21]; section 9.28, dealing with use of vehicles [40 Pa. Code § 9.28]; and section 9.92, dealing with transport vehicle restrictions [40 Pa. Code § 9.92]. Please be advised that the Board's Regulations are available through the Board's website, www.lcb.state.pa.us, by placing your cursor over the link for "Legal" located at the top of the main page, selecting the links for

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“Board Regulations” and then navigating the pages that follow to find the applicable sections.

Lastly, the application form for transporter-for-hire licenses are available from the Board’s Bureau of Licensing at (717) 783-8250, or via the Internet at www.lcb.state.pa.us; once there, click on “For Licensees,” followed by “Applications and Forms,” and select “PLCB-1350.” If you have questions about completing the form(s), you should contact Licensing directly at the above-listed number.

Should you have any further questions or concerns regarding the Liquor Code or the Board’s Regulations, please do not hesitate to again contact this office.

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. 15-175

Attachment