

June 10, 2015

Gary Schiel
Schiel Beverage
704 South Main Street
Wilkes-Barre, PA 18702
VIA E-MAIL: gap063@aol.com

RE: Distributor Advertising

Dear Mr. Schiel:

ISSUE: This correspondence is in response to your e-mail received May 19, 2015, in which you pose questions regarding advertising by a malt beverage distributor (“D licensee”). Specifically, you ask whether, as a D licensee, you may print flyers with your pricing and hand out the flyers on the licensed premises. You also ask whether you may hand out your flyers at a supermarket, which you also own and which is across the street from the licensed premises.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Schiel Beverage LLC holds Malt Beverage Distributor License No. D-3490 (LID 70934) for use by it at premises located at 704 South Main Street, Wilkes-Barre, Pennsylvania.

OPINION: Section 498 of the Liquor Code places several restrictions on the advertising of alcoholic beverages in Pennsylvania. As to price lists, subsection 498(e)(2) prohibits a licensee from distributing by mail, personally or by servants, agents, or employees, price lists, circulars, or handbills off the licensed premises to the general public as a means of advertising liquor, wine, or malt or brewed beverages. [47 P.S. § 4-498(e)(2)]. However, the Pennsylvania Office of Attorney General has advised that subsection 498(e)(2) of the Liquor Code does not prohibit licensees from advertising alcohol products and prices in community papers.

Therefore, it is permissible to advertise in local community papers, as long as the licensee does not own, operate, or control the community paper. It remains unlawful for licensees to conduct their *own* flyer/magazine/circular mailing because the licensee would technically own and operate the publication, which is a violation of subsection 498(e)(2). It is also impermissible to enter into a principal-agent

relationship with a community paper whereby the community paper would produce a flyer/magazine containing the licensee's advertisements alone, because the licensee would completely control the publication in violation of subsection 498(e)(2).

Please note that an advertisement that only mentions a licensee's name, address, and/or the availability of food and *non*-alcoholic beverages may be distributed by the licensee to the general public off of the licensed premises. It is also permissible to send mailings advertising the availability of alcoholic beverages and/or their prices to a distinct group of individuals of legal drinking age who have specifically requested to receive such mailings from a particular licensee. Further, licensees are permitted to distribute price lists, circulars, and handbills *on their licensed premises*, advertising both alcohol and non-alcohol products.

Thus, in response to your specific questions, your D license would permit you to hand out flyers advertising the pricing of malt or brewed beverages on the licensed premises but not on your supermarket premises across the street. However, your D license would permit you to distribute flyers advertising the availability of food and/or non-alcoholic beverages at off-premises locations such as the supermarket.

If you have any additional questions, please feel free 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

LCB Advisory Opinion No. 15-246