

June 26, 2015

Patrick Miller
JJ's Country Tavern
645 Fifth Avenue
New Kensington, PA 15068
VIA E-MAIL: patrick.miller27@verizon.net

RE: VIP Program

Dear Mr. Miller:

ISSUE: This office is in receipt of your e-mail dated June 3, 2015, in which you describe a proposed plan to change your licensed establishment's business practices in order to have better control over your clientele. You express concerns about increasing crime in your area. Specifically, your licensed restaurant would remain open to the general public from 7:00 a.m. until 10:00 or 11:00 p.m. Monday through Saturday, and 11:00 a.m. until 10:00 or 11:00 p.m. on Sunday. After 10:00 or 11:00 p.m. and until 1:30 or 2:00 a.m., your establishment would only be open for those patrons who are participating in your "VIP Program."

You describe this proposed VIP Program as follows: all are welcome to apply for VIP status. You will have open enrollment requiring name, address, e-mail, and the like, to be used in your database and to send out e-mail blasts for special VIP nights and other events. You will reserve the right to grant these VIP cards based on applying individuals' frequency of visitation to your establishment, and how these individuals conduct themselves while patronizing your establishment. You would not use discriminatory factors such as age, sex, religion and the like. You reserve the right to revoke the VIP cards for failure to comply with your code of behavior, which includes no fighting, no stealing, no drugs, and no destruction of property.

You do not plan to charge for this status; however, you ask whether you may impose an administrative fee of less than five dollars (\$5.00) to cover costs of production of VIP cards and paperwork. You believe that a program such as this, along with requiring identification for better usage with a banned patron list, will benefit your operation.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that 645 Jacky, Inc. holds Restaurant Liquor License No. R-5080 (LID 33856) for use by it at the premises located at 645 Fifth Avenue, New Kensington, Pennsylvania. Jacky Robison is the Board-approved manager.

OPINION: Section 102 of the Liquor Code, [47 P.S. §1-102] requires a restaurant to be habitually and principally used for the purpose of providing food to the public. Furthermore, section 491(6) of the Liquor Code prohibits a restaurant licensee from selling any alcohol except in room(s) at all times accessible for the use of the general public. [47 P.S. § 4-491(6)]. However, the Commonwealth Court has held that section 491(6) is not violated if a licensee charges a fee to members of the public who wish to enter the premises. In Re Appeal of Elan of Philadelphia Limited, 439 A. 2d 905 (Pa. Cmwlth. 1982).

Therefore, so long as your proposed VIP cards are available to members of the public and no unlawful discrimination is shown regarding the availability of said cards, limiting access to the premises to those holding such a card at certain times in your operating schedule is permissible. Examples of unlawful discrimination would be denying access to a person on the basis of race or gender. For a more definitive answer as to what is prohibited under the Pennsylvania Human Relations Act, you should contact the Pennsylvania Human Relations Commission at www.phrc.state.pa.us or at (717) 787-4410.

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