

December 30, 2015

Michael Greenstein
VIA E-MAIL

RE: Hotel Package with Wine

Dear Mr. Greenstein:

ISSUE: This is in response to your e-mail of November 17, 2015, wherein you inquire if the advertising of hotel packages that include a bottle of wine and glasses with an overnight stay is permissible.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Bear Creek Management Company, LLC, holds Hotel Liquor License No. H-5834 (LID 65724) for use by it at 101 Doe Mountain Lane, Macungie, Pennsylvania.

OPINION: As a threshold matter, 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 \$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.

It is permissible to offer a certain amount of alcoholic beverages for a set price in a package, the beverages must be offered at the licensee’s regular price, and the other portions of the package cannot be discounted, as this would be considered an unlawful inducement. [47 P.S. § 4-493(24)(i)]. Therefore, a promotion in which a bottle of wine is included with no discounting of the other components when tabulating the final cost is permissible.

If the wine is provided without cost, section 13.53 of the Board’s Regulations applies, permitting a retail licensee, which includes a hotel licensee, to offer one free standardized alcoholic beverage per patron in any offering, as long as the giving of the free drink is not contingent upon the purchase of any other alcoholic beverage. [40 Pa. Code § 13.53]. The standard size for wine is four fluid ounces (including fortified wine). [Id.]. Accordingly, a promotion of providing a bottle of complimentary wine would not

be permissible since the alcohol provided exceeds the aforementioned standard amounts.

Regardless of the structure of the package, please be advised that licensees are held strictly liable for violations of the Liquor Code that occur on their premises, i.e., minors frequenting and furnishing alcohol to minors or visibly intoxicated persons. [47 P.S. § 4-493(1), (13)-(14)].

With regard to promoting the package, be advised that section 498 of the Liquor Code allows the advertising of both the availability and the price of alcoholic beverages in Pennsylvania. [47 P.S. § 4-498]. “Advertisement” means any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (i.e., Internet), 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)]. Section 498 further delineates the requirements and prohibitions related to advertising [47 P.S. § 4-498] and is accessible on the Board’s website at <http://www.lcb.state.pa.us>.

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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing