



January 11, 2016

P.J. Stapleton, Esquire
Weber Gallagher Simpson Stapleton Fires & Newby, LLP
2000 Market Street, 13th Floor
Philadelphia, PA 19103
VIA E-MAIL

Re: Distributor Rebate

Dear Mr. Stapleton:

ISSUE: This is in response to your e-mail of November 20, 2015, wherein you advise that you represent a client who holds a restaurant liquor license. It is your client's understanding that certain distributors are paying marketing rebates that are based upon, among other things, the amount of beer purchased by a retail licensee. The rebates are paid to a marketing/public relations company that has been retained by the retail licensee, for marketing on behalf of the retail licensee. You have asked for an advisory opinion confirming that this arrangement is appropriate and legal pursuant to the terms of the Liquor Code.

OPINION: Section 493(22) of the Liquor Code provides that it is unlawful for any licensee to "offer, pay, make or allow, or for any licensee or his servants, agents or employees, to solicit or receive any allowance or rebate, refunds or concessions, whether in the form of money or otherwise, to induce directly the purchase" of alcoholic beverages. [47 P.S. § 4-493(22)].

In addition, section 493(23) of the Liquor Code provides that it is unlawful for any licensee "to give or permit to be given, directly or indirectly, money or anything of substantial value" to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(23)]. Therefore, please be advised that the arrangement you have described is not appropriate or legal under the Liquor Code. However, you may wish to contact the Alcohol and Tobacco Tax and Trade Bureau regarding potential implications under federal law; its website is www.ttb.gov.

Chief Counsel

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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 of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 15-512