

February 23, 2016

Dave Williams
Cookie M., Inc.
VIA E-MAIL

Re: Distributor Buyer's Club Discount

Dear Mr. Williams:

ISSUE: This correspondence is in response to your e-mail of January 13, 2016, in which you ask whether your licensed distributorship may participate in a “buyer’s club” organized by a financial institution. You explain that by participating, your business would receive free advertising in the financial institution’s mailing and that, in exchange, your business would be required to provide a discount of \$1.00 to buyer’s club members each time they present a membership card and purchase malt or brewed beverages or other products. You understand there is a general prohibition on licensees offering inducements to purchase alcohol, and thus you inquire whether this arrangement would be unlawful.

Records maintained by the Pennsylvania Liquor Control Board (“PLCB”) indicate that Cookie M., Inc., holds Distributor License No. D-2267 (LID 41122) for the premises located at 1914 Minno Drive, Johnstown, Pennsylvania.

OPINION: As you correctly note, the Liquor Code makes it unlawful for any licensee “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 beverage[s], or . . . 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 which the board shall define.” [47 P.S. § 4-493(24)(i)]. In addition to the exception made for advertising novelties of nominal value, the above provision also allows manufacturers to offer and honor coupons which give monetary rebates on purchases of malt or brewed beverages through distributors and importing distributors. Id.

Distributors are not subject to the happy hour provisions of the Liquor Code and the PLCB’s Regulations. They are therefore free to sell malt or brewed beverages

at whatever price they choose and may establish different prices for different customers. Nonetheless, based on your description, it would not be permissible for your distributorship to offer a \$1.00 discount on malt or brewed beverages to buyer's club members. This is because the offering of a discount based on the presentation of a card has traditionally been viewed as an inducement to purchase alcohol under subsection 493(24)(i). Moreover, it would not fall under the exception for monetary rebates because such coupons must be offered by malt or brewed beverage manufacturers and are only redeemable by mail.

However, if the discount were confined to non-alcoholic products sold by your distributorship such as soft drinks and ice, it would not violate the prohibition on inducements to purchase alcohol.

If you have any further questions or concerns regarding the Liquor Code or the PLCB's Regulations, please do not hesitate 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,

RODRIGO J. DIAZ
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

LCB Advisory Opinion No. 16-036