

April 8, 2016

Patrick M. McHugh, Esq.  
1721 Ferndale Avenue  
Abington, PA 19001  
**VIA E-MAIL**

**Re: Proposed Happy Hour Promotion**

Dear Mr. McHugh:

ISSUE: This is in response to your e-mail of March 24, 2016, wherein you request an advisory opinion on behalf of your client, Jeffrey J. Bankovich, regarding a proposed happy hour promotion that he is considering offering at his licensed establishment. Specifically, your client wishes to offer a two-hour happy hour, seven days per week, during which each customer would receive a pull tab ticket with every drink that he or she orders. Customers would then be required to play the pull tab tickets to determine what price they must pay for their drinks, which is either full price, half price, or \$1.00. Every batch of pull tab tickets used would include the following percentages of tickets having each respective payout: full price—40%, half price—40%, and \$1.00—20%.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Jeffrey J. Bankovich holds Restaurant Liquor License No. R-10718 (LID 47007) for use at the premises located at 39 Allen Street, West Nanticoke, Pennsylvania.

OPINION: Pursuant to the Liquor Code and the PLCB’s Regulations, retail licensees are permitted to offer both a daily drink special and a happy hour each business day. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102. No other discount pricing practices are permitted. Further, no discount pricing may occur between 12:00 a.m. (midnight) and the legal closing hour, i.e., 2:00 a.m., for most retail licensees. 40 Pa. Code § 13.102(a).

With regard to happy hour pricing, a retail licensee is permitted to discount any and all alcoholic beverages for a period of time not to exceed four consecutive or non-consecutive hours, and not to exceed fourteen hours per week. 47 P.S. §§ 1-102, 4-406(g); 40 Pa. Code § 13.102(a). The hours may be fixed, subject to the above noted limitations, in any manner a licensee desires; however, during a happy hour, the price of alcoholic beverages may not change. 40 Pa. Code § 13.102(a)(4). Notice of all happy hours must be posted on the licensed premises seven days prior to each happy hour. 47 P.S. § 4-406(g).

In this instance, the proposed happy hour promotion would not be permissible because the price that each customer would be required to pay for the same type of drink would fluctuate during the course of the happy hour depending upon the payout of the pull tab ticket that the customer receives. As stated above, the price of alcoholic beverages may not change during the course of a happy hour.

It is also questionable whether the proposed happy hour promotion would be considered unlawful gambling. Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether the promotion that you described would constitute unlawful gambling. However, it should be noted that unlawful gambling generally consists of the following elements: (1) consideration or a fee or charge to play; (2) an element of chance; and (3) a prize or reward. Pennsylvania Liquor Control Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986). To the extent that you wish to obtain an official opinion on whether the proposed promotion would in fact be construed as unlawful gambling, you should contact the local police, the Pennsylvania State Police, or the county District Attorney's 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.

Sincerely,



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