

May 5, 2016

Elwood Marcks, Jr.
Big Woody's Hanover
702 Hanover Avenue
Allentown, PA 18109
VIA E-MAIL

RE: Free Beer Promotion

Dear Mr. Marcks:

ISSUE: This is in response to your e-mail of January 22, 2016, wherein you request an advisory opinion, specifically inquiring if it is lawful to advertise, to promote, and to provide a free twelve ounce beer to patrons over the age of twenty-one. The promotion will occur off premises at a hockey game; the free beer will be provided at the licensed premises if the home team scores more than three goals.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Big Woody's Hanover, LLC. holds Restaurant Liquor License No. R-1486 (LID 68084) for use by it at 702 Hanover Avenue, Allentown, Pennsylvania.

OPINION: As you may be aware, retail licensees of the PLCB are permitted to offer one free standard-size alcoholic beverage per patron in any offering, as long as the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverage. 40 Pa. Code § 13.53. A standard-size alcoholic beverage is twelve fluid ounces of a malt or brewed beverage. Id. Accordingly, it would be permissible to offer one free beer, up to twelve ounces to patrons when/if the home team scores three goals, provided that such patrons are twenty-one years of age or older and not visibly intoxicated.

Since you have not specified the manner/method in which you intend to promote the free beer off-premises, please be advised that the advertising/promotion must comport with the Liquor Code and the PLCB's Regulations. Although there is nothing that would prohibit an entity/licensee from advertising free alcohol, the advertising must comply with the restrictions as to advertising practices. Pursuant to section 498, manufacturers, wholesalers, retailers and shippers, whether from outside or

inside the Commonwealth, and any licensees are permitted to advertise their products and prices in Pennsylvania. 47 P.S. § 4-498(a). Any advertisement of price may not contain: “[a]ny statement that is false, deceptive, or misleading.” 47 P.S. § 4-498(b).

Moreover, for all alcoholic beverage and malt beverage advertising, the following conditions apply:

1. The entity responsible for the advertisement must be clearly identified in the advertisement.
2. No licensee may distribute, by mail, personally or through servants, agents or employees, price lists, circulars or handbills off the license premises to the general public as a means of advertising liquor, wine or malt or brewed beverages.
3. No print advertisement of alcoholic beverages of any type shall be permitted within three hundred feet of any church, school or public playground. This prohibition shall not preclude any point of sale advertisement, menus or other print advertisement regarding alcoholic beverages inside the licensed premises.
4. The use in any advertisement of alcoholic beverages of any subject matter, language or slogan directed to minors to promote consumption of alcoholic beverages is prohibited. Nothing . . . shall be deemed to restrict or prohibit any advertisement of alcoholic beverages to those persons of legal drinking age.
5. No advertisement shall be permitted, either directly or indirectly, in any booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or on behalf of any educational institution.
6. No advertisement that is obscene shall be permitted; and
7. Advertisement of alcoholic beverages and malt and brewed beverages shall not be inconsistent with the spirit of safety or safe driving programs.

47 P.S. § 4-498(e)-(f).

The term “advertisement” is defined as “any advertising of alcoholic beverages through the medium of radio broadcast, television broadcast, newspapers, periodicals or other publication, outdoor advertisement, any form of electronic transmission 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).

As indicated above, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution. However, you may wish to consult the decision in Pitt News v. Pappert, which held section 498 of the Liquor Code unconstitutional as applied to The Pitt News. Pitt News v. Pappert, 379 F.3d 96, 113 (3d Cir. 2004).

Also, while section 498(e)(2) of the Liquor Code prohibits the distribution by mail of price lists, circulars or handbills to the general public as a means of advertising liquor, wine or malt or brewed beverages, 47 P.S. § 4-498(e)(2), the Liquor Code does not define the terms “circular” or “mailing.” However, Webster’s II New College Dictionary (1999) defines “circular” as a “printed advertisement, directive or notice for mass distribution,” and “mailing” is defined as “a batch of mail sent at one time by a mailer.” For purposes of clarity and uniformity, the Board has interpreted the terms “circular,” “price list,” and “handbill” to mean any form of “unsolicited” advertising. Nevertheless, please note that the Pennsylvania Attorney General’s Office has determined that this prohibition does not prevent a licensee from advertising in a newspaper or community newspaper.

Therefore, any the promotional advertising must be conducted in a manner that is consistent with the aforementioned restrictions.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB’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

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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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

RODRIGO J. DIAZ
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. 16-141