

May 5, 2016

Paul Waliczek
VIA E-MAIL

RE: Beer and Pizza Promotion for Bowling League

Dear Mr. Waliczek:

ISSUE: This is in response to your e-mail of March 24, 2016, wherein you advise that you would like to hold and promote a summer bowling league at your licensed establishment where each bowler would receive pizza and one beverage of their choosing (beer or soda). You want to use a pizza shop to deliver flyers advertising the league to its customers, and in return, you would then purchase the pizzas for league participants from the pizza shop. You ask if this is permissible and, if so, what the mandatory verbiage for the flyer would be.

You advise that you understand the age requirements for patrons choosing soda versus beer. You ask further if this arrangement poses a conflict with the pizza shop if the pizza shop holds a liquor license of its own, or alternatively, if you would have to set up the arrangement with a pizza shop that does not hold a liquor license. Finally, you ask if it would be helpful for you to send a draft of your proposed flyer to this office for assessment of its legality.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Wilkes-Barre Lanes, Inc. of Wilkes Barre, Pennsylvania, holds Restaurant Liquor License No. R-11044 (LID 24012) for its premises located at 470 Stanton Street, Wilkes Barre, Pennsylvania.

OPINION: As a preliminary matter, the bowling league you propose appears to comport with the Liquor Code and the PLCB’s Regulations which are set forth in sections 5.30 and 5.32(e). 40 Pa. Code §§ 5.30 and 5.32(e). An explanation of the PLCB’s Regulations on this issue is available on the PLCB’s website, www.lcb.state.pa.us, by placing your cursor over “Legal,” selecting the link for “Advisory Notices,” and then selecting the link for Advisory Notice 14. Generally, restaurant licensees may not hold on their licensed premises an event, tournament or

contest or advertise or offer an award or permit the award on the licensed premises of trophies, prizes or premiums for any purpose. 40 Pa. Code § 5.32. As you are likely aware, one such exception allows restaurant liquor licensees to permit bowling tournaments or bowling contests in bowling alleys immediately adjacent to the licensed premises, as well as contests by groups constituting a league. Id.

Even if an event, tournament or contest is lawfully conducted under one of the exceptions set forth in section 5.32, several additional rules apply:

- (1) There may not be lewd, immoral or improper conduct by the licensee, its servants, agents, employees, patrons or event, contest or tournament participants.
- (2) There may not be unlawful gambling directly or indirectly associated with an activity on the licensed premises. A licensee will be held strictly liable for unlawful gambling on the licensed premises.
- (3) There may not be an event, contest or tournament which involves the consumption of alcoholic beverages by an event, tournament or contest participant.
- (4) The price of a ticket or evidence of admission to an event, tournament or contest may not include a charge or assessment for alcoholic beverages or entitle the holder thereof to receive an alcoholic beverage anywhere on the licensed premises except for alcoholic beverages included in a meal package offering as provided for in Chapter 13 (relating to promotion).**
- (5) A licensee or sponsoring charity may advertise an event, tournament or contest.
- (6) Hotel, restaurant, club, privately-owned public golf course, privately-owned private golf course, municipal golf course, brew pub and malt beverage eating place licensees, as well as governing bodies of professional golf, skiing, tennis, bowling, pocket billiards and nonlicensee sponsors as provided in subsection (e) may award prizes to contestants or participants of events, tournaments or contests.

(7) The total value of all prizes for any given event, tournament or contest may not exceed \$1,000. The total value of all prizes awarded in any 7-day period may not exceed \$25,000. An event, tournament or contest conducted under the authority of the Local Option Small Games of Chance Act (10 P. S. § § 328.101—328.707) or the Bingo Law (10 P. S. § § 301—308.1) is subject to the prize limits in these acts.

(8) Golf, skiing, tennis, pocket billiards or bowling events, tournaments, contests and events sanctioned by the State Athletic Commission are exempted from the prize value restrictions in this section.

(9) Licensees shall maintain on the licensed premises for 2 years, from the date of the event, an itemized list of all prizes for each event, tournament, contest indicating each prize, its value and the name and address of the recipient.

40 Pa. Code § 5.32 (emphasis added). Based upon the foregoing, you would not be permitted to include alcoholic beverages as part of a patron's participation in the bowling league. Although paragraph 4 of section 5.32 (emphasized above) specifies an exception for "meal packages," this exception is no longer provided for in the Liquor Code, and therefore, is no longer applicable to this regulation.

You may, however, discount alcoholic beverages during the bowling league, so long as the discounting practices are in conformity with the Liquor Code and PLCB Regulations. Information on discount pricing can be found via the PLCB's website at www.lcb.state.pa.us, by going to the "Legal" tab, then "Advisory Notices," then "Advisory Notice No. 16 – Discount Pricing Policies."

Regarding your inquiry concerning advertisements, in Pennsylvania, the advertisement of alcoholic beverages is generally governed by section 498 of the Liquor Code. 47 P.S. § 4-498. 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;" "[a]ny statement that is disparaging of the products of a competitor;" or "[a]ny statement referring to monetary comparison between brands." 47 P.S. § 4-498(b). Prices that are advertised or displayed on licensed

premises must be the prices that are in effect at the time of the advertisement or display. 47 P.S. § 4-498(c).

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) (emphasis added). 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).

Therefore, your proposal, whereby another entity would distribute flyers for your bowling league, is problematic for two reasons: first, under section 5.32(e)(5) of the PLCB's Regulations, as set forth above, only the licensee or sponsoring charity can advertise a tournament being held on the licensee's premises; and second, pursuant to section 4-498 of the Liquor Code, alcoholic beverages cannot be advertised by a licensee via handouts distributed off the licensed premises. Thus, your inquiries concerning use of a pizza shop, licensed or unlicensed, are moot.

Finally, please be advised that the information concerning advertisements discussed herein is also available on the PLCB's website, identified above, by placing your cursor over "Legal," selecting the link for "Advisory Notices," and then selecting the links for "Advisory Notice No. 10 – Trade Practices" and "Advisory No. 15 – Advertising of Alcoholic Beverages in Pennsylvania."

Please do not hesitate to contact this office if you have any additional questions.

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

LCB Advisory Opinion No. 16-169