

July 27, 2016

Ryan Merrill
VIA E-MAIL

Re: Free Drink Coupon

Dear Mr. Merrill:

ISSUE: This is in response to your e-mail sent on June 9, 2016, in which you seek approval of your proposed free drink coupon. Specifically, you state that you hope to dispense a “free beverage card” to local businesses as a coupon in order to promote your first class train accommodations. In order to redeem the coupon for a free drink, whether alcoholic or non-alcoholic, a patron would be required to first purchase a train ticket. You cite section 13.53 of the Pennsylvania Liquor Control Board’s (“PLCB”) Regulations for the proposition that retail licensees may provide one free drink per day. 40 Pa. Code § 13.53. It is presumed for purposes of this response that no alcoholic beverages will be served to minors or visibly intoxicated persons.

Records of the PLCB indicate that Strasburg Rail Road Company holds Public Service Liquor License No. P-128 (LID 56179), with an address of P.O. Box 96, Strasburg, Pennsylvania.

OPINION: The draft “free beverage card” identifies your company and states “Purchase a ticket for any First Class* car and receive a Complimentary Beverage with this card. Valid for up to 4 passengers. Expires December 31, 2017. Seating is limited. Pre-purchase at Strasburg RailRoad.com. *First Class includes Parlor, Lounge or President’s Cars.”

While your offer would be permissible because of the regulation that you have cited, the manner in which you plan to promote it is problematic. Licensed establishments may advertise the availability and/or price of alcoholic beverages subject to certain provisions of the Liquor Code and PLCB Regulations. 47 P.S. §§ 4-498, 4-493(20)(i); 40 Pa. Code §§ 13.1-13.62; and PLCB Advisory Notice No. 15 (4th Revision). More specifically, section 498 of the Liquor Code defines “advertisement” to include any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (i.e., Internet), or any other printed or graphic matter including coupons, booklets, flyers or cards, or on the product label or attachment itself. 47 P.S. § 4-498(g).

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Requirements for lawful advertising are set forth in the PLCB's Advisory Notice No. 15 (4th Revision), which is attached hereto for your convenience and which is available on the PLCB's website at www.lcb.state.pa.us.

The advertising restriction that is most problematic with your proposal is the unsolicited distribution prohibition. Specifically, licensees are not allowed to give unsolicited handbills or circulars advertising the availability of alcohol at their premises to members of the general public, or a subset thereof such as local businesses. *See Pennsylvania State Police v. Case Beer Soda*, 156 Pa. Cmwlth. 256, 627 A.2d 226 (Pa. Cmwlth. 1993). In this context, "handbills or circulars" would include a coupon that includes an offer of free drinks. The distribution prohibition would include providing your coupons to local businesses for distribution by them to the general public.

To be permissible, the licensee's distribution of such materials must be preceded by a patron's request to receive the promotional material. PLCB Advisory Notice No. 15 (4th Revision). Thus, to the extent that you may have an e-mail or mobile messaging platform to which patrons may voluntarily elect to receive information and offers from your company, you could distribute free drink coupons in that manner. You could also make coupons available on your website and at your physical premises.

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

Enclosure: Advisory Notice No. 15 (4th Revision)

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