

August 17, 2016

Jason A. Santora
General Manager
Landmark Americana
VIA E-MAIL

RE: Beer Flight Reward Card Program

Dear Mr. Santora:

ISSUE: This is in response to your e-mail sent July 7, 2016, wherein you indicate that your licensed restaurant is considering a promotion whereby reward cards would be offered to customers allowing them to obtain a free beer or a free appetizer after purchasing six flights of beer. You explain that the beer flights would be sold at the normal price and would not be discounted. You also indicate that customers would only receive credit for purchasing one flight of beer per day. Accordingly, you ask whether this proposed promotion would be permissible.

The Pennsylvania Liquor Control Board's ("PLCB") records indicate that you are the PLCB-approved manager for Landmark of West Chester LLC, which holds Restaurant Liquor License No. R-14161 (LID 57163) for use at the premises located at 158 West Gay Street, West Chester, Pennsylvania.

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits a licensee from offering or giving to consumers any prize, premium, gift or other inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value (defined as items bearing advertising and having a wholesale cost of \$15.00 or less). 47 P.S. § 4-493(24)(i). A reward card program that offers customers a reward based on purchases of alcoholic beverages would be considered an unlawful inducement to purchase alcohol in violation of section 493(24)(i) and, thus, would not be permitted, unless the reward being offered is limited to advertising novelties of nominal value.

Therefore, the reward card program that you are contemplating, whereby consumers would receive either a free flight of beer or an appetizer after purchasing six flights of beer, would not be permitted under Pennsylvania law.

However, please be advised that Act 39 of 2016, which becomes effective on August 8, 2016, creates a new exception to section 493(24)(i) that allows retail licensees and breweries to offer a mug club to their patrons. 47 P.S. § 4-493(24)(iii). A “mug club” is defined as follows:

A group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. Membership shall be by written application and the licensee must maintain a written list of active members as part of its records. Members shall pay an annual fee as well as a renewal fee as set by licensee. Membership shall, at a minimum, entitle the member to a mug, glass or similar container and said container must be used when the member is served any discounted malt or brewed beverages. No discounted malt or brewed beverages may be provided between midnight and seven o'clock antemeridian.

47 P.S. §1-102. In addition, mug club discounts are not counted against a licensee's maximum number of hours during which it may offer happy hour pricing. 47 P.S. §§4-406(g), 4-442(g). Thus, you may wish to consider the possible alternative of offering a mug club for your patrons to join.

Finally, please keep in mind that, pursuant to section 13.53 of the PLCB's Regulations, a retail licensee is permitted to offer one free standard-size alcoholic beverage per patron in any offering, as long as the giving of the free drink is not contingent upon the purchase of any other alcoholic beverage. 40 Pa. Code § 13.53. A standard-sized alcoholic beverage means twelve fluid ounces of malt or brewed beverages, four fluid ounces of wine (including fortified wine), and one and one half fluid ounces of liquor. Id.

If you have any further questions or concerns regarding this matter, 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.

Sincerely,

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

RODRIGO J. DIAZ
CHIEF COUNSEL

Attachments

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

PLCB Advisory Opinion No. 16-300