

August 17, 2016

Betsy Johnson  
**VIA E-MAIL**

**RE: Advertising for Catering Club**

Dear Ms. Johnson:

ISSUE: This is in response to your e-mail sent June 16, 2016, wherein you indicate that you represent a catering club licensee, and you ask whether it is lawful to advertise using handbills, posters, or print and Internet advertisements. Specifically, you ask whether your catering club can use language such as “all are welcome,” or not reference the fact that it is a private club when advertising happy hour specials, etc.

OPINION: Initially, please be advised that the Liquor Code generally prohibits a club licensee or catering club licensee from selling alcohol to individuals who are non-members of the club, or who are not active members of another club that is chartered by the same state or national organization. 47 P.S. § 4-406(a)(1). The general prohibition on selling alcohol to non-members does not, however, preclude a club member from purchasing alcoholic beverages for non-member guests; nor does it preclude the non-member from being served alcohol purchased by a club member.

Moreover, patrons of a catering club licensee are permitted to purchase alcoholic beverages from the club even if they are non-members, as long as they are a part of a “catered event.” Id. The Pennsylvania Liquor Control Board’s (“PLCB”) Regulations define “catered events” as those involving the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises, or brought onto the premises already prepared, for the accommodation of groups of people who are using the facilities by prior arrangement at least twenty-four hours in advance of the time of the function and which are paid for by the third party. 40 Pa. Code § 5.83(a). Records must be kept showing the date and time catering arrangements were made, the name of the person or the organization making the arrangements, and the approximate number of persons to be accommodated. 40 Pa. Code § 5.83(b).

Act 39 of 2016, which becomes effective August 8, 2016, will allow catering club licensees to hold a maximum of twelve self-sponsored catered events during a two-year

licensing term, with no more than one such event being held in a calendar month. 47 P.S. § 4-406. Otherwise, catered events must be conducted for a third party and cannot be self-sponsored by a licensee.

With that being said, there is nothing in the Liquor Code or the PLCB's Regulations that prohibits a club or catering club licensee from being open to the public (i.e., to non-members) for the sale of food and non-alcoholic beverages anywhere on its licensed premises, or from advertising the same. However, it should be noted that the PLCB's Regulations require that the operations of a licensed club or catering club must conform to the club's constitution and bylaws at all times. 40 Pa. Code § 5.81. Thus, if your catering club's constitution or bylaws contain any provisions prohibiting the club from being open to the public for the sale of food and non-alcoholic beverages or from advertising the same, your catering club would be required to adhere to such provisions.

Furthermore, please be advised that any advertisements of alcoholic beverages used by your catering club would need to conform to 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).

For all alcoholic beverage and malt beverage advertising, the following conditions also 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 licensed 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 in 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) (holding 47 P.S. § 4-498 unconstitutional, as applied).

Also, while section 498(e)(2) of the Liquor Code, 47 P.S. § 4-498(e)(2), 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, 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.” 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.

Finally, it is generally advisable for club or catering club licensees to avoid giving the appearance in any advertising that alcoholic beverages are being made available for purchase by the public, since, as explained above, such conduct is not authorized under their respective licenses.

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,



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

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