

October 26, 2016

Gary Wilson
VIA E-MAIL

RE: Pricing Questions

Dear Mr. Wilson:

ISSUE: This correspondence is in response to your e-mail dated September 10, 2016, wherein you indicate that your licensed business would like to offer for sale to its customers a bucket of beer, and you inquire as to the legality of your proposed pricing scheme for the same. Specifically, by way of example, you indicate that you currently offer Miller Lite beer for sale at a price of \$5.00 per single twelve-ounce bottle. You would like to sell a bucket of five twelve-ounce Miller Lite bottles of beer for \$8.00, which would make the price of each bottle \$1.60 if purchased as part of the bucket package. You ask if this pricing structure would violate the Liquor Code or the Pennsylvania Liquor Control Board's ("PLCB") Regulations.

OPINION: Please be advised that retail licensees generally have the discretion to determine the regular prices at which to sell their products. Regular drink prices are those that are not discounted, and that are regularly charged on a consistent basis. In the example that you presented, if the \$8.00 price for a bucket of five twelve-ounce Miller Lite bottles is established as the regular price for such bucket of beer, and is not advertised as a discount, then it would not violate the Liquor Code or the PLCB's Regulations. As long the price charged is the regular price for the bucket of beer, it does not matter that the respective price for each bottle of beer sold as part of a bucket package is less than the price that would be charged if the same bottle of beer were purchased separately. However, if, at any point, you desire to advertise a discount on the regular prices that are established for either a single bottle of beer or a bucket of beer, such discount would need to be offered as part of a happy hour promotion or a daily drink special promotion.

As you are likely aware, the Liquor Code and the PLCB's Regulations authorize retail licensees to offer happy hour discount pricing. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102(a). That is, retail licensees are permitted to discount *any and all* alcoholic beverages for a period of time not to exceed four consecutive or non-consecutive

hours per day, and not to exceed fourteen hours per week. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102(a). During such happy hours, the price of alcoholic beverages may not change. The hours need not be consecutive and may be divided, subject to the above-noted limitation, in any manner a licensee desires. Notice of all happy hours must be visibly posted on the licensed premises seven days prior to each happy hour. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102(a).

Additionally, the PLCB's Regulations authorize retail licensees to offer daily drink special discount pricing. 40 Pa. Code § 13.102(b)(2). With regard to daily drink specials, retail licensees are permitted to offer one specific type of alcoholic beverage at a discounted price all day, or for a portion of the day, if they choose. Id. A specific type of alcoholic beverage means a specific registered brand of malt or brewed beverage, a type of wine, a type of distilled spirits, or a mixed drink. Id. A specific brand of beer such as "Blue Hound Pilsner" or "Brendan's Cream Stout" or "Oil City Light" may be discounted, but not "all draft" or "all bottled" beer or "all Blue Hound products." Daily wine drink specials could be "Chardonnay" or "Merlot," but not "all white wine" or "all red wine" or "all Kendall's wines." Permissible spirits specials would be "Rum and Cola" or "all brandy drinks," but not "all well drinks" or "all Jackson's products." PLCB Advisory Notice No. 16.

No discount pricing practice (happy hour or daily drink special) may occur between 12:00 a.m. and the legal closing hour, which is 2:00 a.m. for most retail licensees. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102.

You should also be mindful that section 493(24)(i) of the Liquor Code generally prohibits licensees from offering anything of value as an inducement to purchase alcohol, except advertising novelties of nominal value. 47 P.S. § 4-493(24)(i).

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

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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

LCB Advisory Opinion No. 16-430