

October 31, 2016

Tara Pflanz
VIA E-MAIL

RE: Coupon for One Free Beer

Dear Ms. Pflanz:

ISSUE: Your e-mail of August 16, 2016 inquires whether your taproom, located in Elizabethtown, may advertise with another area business on flyers that will be distributed throughout Lancaster and York counties. You would like to include a coupon for one free draft beer. You inquire whether this is permissible.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Funk Brewing Company holds Brewery License No. B-515 (LID 68663) for at 19 South 6th Street, Emmaus, Pennsylvania and Manufacturer’s Storage License No. GS-515-1 (LID 72353) for use by it at premises located at 28 South Market Street, Elizabethtown Pennsylvania.

OPINION: Coupons for discounts on alcoholic beverages are permitted only for purchases at state stores. 47 P.S. 4-493(24)(i). Licensees are permitted to give to or purchase for consumers, one standard-size alcoholic beverage per day, provided the giving of the alcoholic beverage is not contingent upon the purchase of any other alcoholic beverages and is limited to one standard-sized alcoholic beverage per patron in any such offering. 40 Pa. Code § 13.53. A standard-size alcoholic beverage is twelve fluid ounces of a malt or brewed beverage, four fluid ounces of wine (including fortified wine), and one and one-half fluid ounces of liquor. 40 Pa. Code § 13.53. Moreover, there is no requirement that all patrons be offered a free alcoholic beverage.

Any advertisements of alcoholic beverages must 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.

Because you do not specify the identity of the other area business with whom you wish to advertise, note that section 13.51 of the PLCB’s Regulations prohibits a licensee of one class from providing anything of value to licensees of another class. 40 Pa. Code § 13.51. Historically, however, this office has approved cooperative advertising between licensees of a different class, so long as each party pays its proportionate share for the cost of advertisement.

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, appearing to read "Rodrigo J. Diaz".

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 No. 16-443