

November 17, 2016

Shelly M. Rowan, Esquire  
Cohen Silverman Rowan, LLP  
6650 Gunpark Drive, Suite 200  
Boulder, CO 80301  
**VIA E-MAIL**

**RE: Loyalty Program**

Dear Ms. Rowan:

ISSUE: This is in response to your August 24, 2016 e-mail to this office in which you state that you represent a national restaurant chain that has restaurants in Pennsylvania. You also state that some of the restaurants offer a loyalty program that awards points to members based on the purchase of food and non-alcoholic beverages. Lastly, you state that loyalty members may accumulate points and redeem the points for free or discounted food, non-alcoholic beverages, and branded merchandise sold by the restaurants.

You ask if it is permissible for a Pennsylvania Liquor Control Board (“PLCB”) licensed establishment to award points to its loyalty members based on the purchase of food and beverages (both alcoholic and non-alcoholic beverages). You also ask if it is permissible for a PLCB licensed establishment to allow its loyalty members to redeem their points on alcoholic beverages (or discounts on alcoholic beverages), food, non-alcoholic beverages, and merchandise.

OPINION: Section 493(24)(i) of the Liquor Code prohibits any licensee of the PLCB, a manufacturer, or an employee or agent of a manufacturer from offering or giving anything of value as a premium to induce the purchase of liquor or malt or brewed beverages, except advertising novelties of nominal value, defined as items bearing advertising slogans with a value of \$15.00 or less. 47 P.S. § 4-493(24)(i).

Therefore, a loyalty program in which points or rewards are given in exchange for purchases of alcohol would be considered an unlawful inducement, unless the rewards are limited to advertising novelties of nominal value. Also, it would be permissible to have a loyalty program where a customer can earn points based on the purchase of food and/or non-alcoholic beverages.

With regard to your second question, a point system which establishes an alternate method for paying for food and even alcoholic beverages is permissible; however, it must be in conformity with the PLCB's Regulations pertaining to discount pricing practices and free drinks.

Pursuant to section 13.53 of the PLCB's Regulations, 40 Pa. Code § 13.53, a retail licensee is permitted to offer one free standard-sized 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. A standard-sized alcoholic beverage means twelve fluid ounces of malt or brewed beverage, four fluid ounces of wine (including fortified wine), and one and one-half fluid ounces of liquor. Id. Therefore, it would be permissible to give one free beer to each person, so long as the drink is limited to one such drink and consists of no more than the standard-sized alcoholic beverage discussed above.

As for discounted beverages, in each business day retail licensees may have only two discount promotions: a daily drink special and a happy hour. 40 Pa. Code § 13.102.

Regarding happy hours, retail licensees are permitted to discount any or all alcoholic beverages for a period of time not to exceed four consecutive hours or nonconsecutive hours per day and a maximum fourteen hours per week. 47 P.S. 4-406(g). During this time, the price of alcoholic beverages may not change. Further, the happy hour cannot extend beyond 12:00 a.m. 40 Pa. Code § 13.102(a).

Regarding a daily drink special, 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. 40 Pa. Code § 13.102(b)(2). A specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. Id. For example, 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 wines." Permissible spirits specials would be "Rum and Cola" or "all brandy drinks," but not "all well drinks" or "all Jackson's products." See Board Advisory Notice No. 16. Like a happy hour, a daily drink special must end by midnight; there can be no discounting of alcoholic beverages between midnight and 2:00 a.m.

Therefore, loyalty points may be used on non-alcoholic beverages, merchandise, and food, as long as these items are not discounted as part of a package with alcoholic beverages because it would violate the Liquor Code provision that prohibits giving something of value to induce the purchase of alcoholic beverages. 47 P.S. § 4-493(24)(j).

Also, loyalty points may be used to discount alcohol, as long it is done in conformity with a discount pricing promotion discussed above; please note that it would be incumbent upon the licensee to establish that the points used to acquire alcoholic beverages would be equivalent to the cash price.

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

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
Tisha Albert, Director of Office of Regulatory Affairs  
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

PLCB Advisory Opinion No. 16-467