

January 3, 2017

Sarah R. Burt
VIA E-MAIL

Re: Location for Giving Advertising Novelties

Dear Ms. Burt:

ISSUE: This is in response to your e-mail of November 28, 2016, wherein you advise that your firm has a client that is licensed as a manufacturer in Pennsylvania. This client wants to give away hats, t-shirts, and other advertising novelties, which you understand must be valued at \$15.00 or less. You ask if there are any restrictions regarding the location of the giveaways; for example, could they be distributed at an unlicensed location such as a park or shopping center?

OPINION: Section 493(24)(i) of the Liquor Code generally prohibits manufacturers or licensees from offering anything of value as an inducement to purchase alcohol. 47 P.S. § 4-493(24)(i). However, section 493(24)(i) includes a limited exception allowing for the provision of advertising novelties of nominal value. Id. The PLCB has defined advertising novelties of nominal value as items that have a wholesale cost of \$15.00 or less and contain advertising material. 40 Pa. Code § 13.52; PLCB Advisory Notice No. 10 (6th Revision). Advertising novelties of nominal value typically include items such as matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, and pens and pamphlets.

Note that this restriction only applies when the giveaway is offered as an inducement to purchase alcohol. If the purchase of alcohol is not required to receive the giveaway, section 493(24)(i) does not apply, and therefore there is no restriction on the value of the giveaway.

Neither the Liquor Code nor the PLCB's Regulations contain any restrictions as to the location where such advertising novelties may or may not be given to members of the general public. Therefore, they may be distributed at an unlicensed location, such as a park or shopping mall.

However, a giveaway conducted on the premises of a retail licensee – a licensee that holds a hotel license, a restaurant liquor license, an eating place retail dispenser license,

a club license or a catering club license – may be a violation of the PLCB’s Regulations. Section 13.51 of the PLCB’s Regulations provides:

[N]o in-State or out-of-State manufacturer . . . **may directly or indirectly**, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees of a different class, **anything of value** by means of advertisements, contributions, purchase, sale of tickets, donations or **by any device, for any purpose**.

40 Pa. Code § 13.51 (emphasis added). If a manufacturer is offering free giveaways at a retail licensee’s location, that could be construed as offering something of value to the retail licensee, unless the giveaway constitutes an advertising novelty as set forth above. See Advisory Opinion No. 01-066. Therefore, it is recommended that you avoid offering giveaways on the premises of a retail licensee.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB’s Regulations, please feel free to 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
Tisha Albert, Director of Office of Regulatory Affairs
B. L. Peifer, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing