

January 5, 2017

Todd Hennard
VIA E-MAIL:

RE: Higher Price for Cold Beer

Dear Mr. Hennard:

ISSUE: This office is in receipt of your e-mail of December 19, 2016, in which you inquire about the legality of charging a higher price for cold beer versus warm beer due to the added expense of making the beer cold. You inquire whether this is legal under the Liquor Code.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that A Slice of the 80’s holds Restaurant License No. R-7757 (LID 71258) and Transporter for Hire Class B License No. IB-4472 (LID 71827).

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. Please be mindful that the use of different pricing schemes may not be used to circumvent the discount pricing regulations contained in section 13.102 of the Board's Regulations [40 Pa. Code Section 13.102] and Board Advisory Notice No. 16(Amended). Only those discounts permitted in section 13.102 of the Regulations are lawful.

Generally speaking, a pricing scheme under which two different prices are charged for the same item is not permissible, since one of the prices would represent a discount and the existence of two prices would represent a type of price fluctuation not allowed under the Board’s Regulations. 40 Pa. Code Section 13.102(a)(4). An exception exists if a licensee operates two separate bars under one license and each bar has its own pricing scheme. That does not appear to be the case here.

That being said, nothing would prevent a licensee from adding a surcharge to a customer’s bill for an additional service such as chilling a product. As long the price charged for the beer is identical, warm or cold, the imposition of an additional fee for cooling a product that would otherwise be warm is permissible.

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

LCB Advisory Opinion No. 16-560