

December 24, 2018

Katie Molchan
VIA E-MAIL

Re: Happy Hour “Grace Period”

Dear Ms. Molchan:

ISSUE: This is in response to your e-mail dated November 16, 2018, wherein you state that Mixtape, LLC offers a daily happy hour for two hours Tuesday through Saturday. You state that per your understanding of the law, this would allow Mixtape, LLC to extend its daily happy hour up to the four-hour allowance, or add a non-consecutive happy hour, as long as it has not exhausted the four-hour daily allowance or fourteen-hour weekly limit. You inquire whether Mixtape, LLC would be permitted to offer a “grace period,” to extend the happy hour price by several minutes to patrons who were in line prior to the end of happy hour.

PLCB records indicate that Mixtape, LLC holds Restaurant Liquor License No. R-12467 (LID 71894) for the premises at 4907 Penn Avenue, Pittsburgh, Pennsylvania.

OPINION: As you appear to be aware, retail licensees, such as restaurant licensees, are permitted to offer both a daily drink special and a happy hour in each business day. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102. No other discount pricing practices are permitted.

With regard to happy hour pricing, a retail licensee is 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. §§ 1-102, 4-406(g); 40 Pa. Code § 13.102(a). The hours may be fixed, subject to the above noted limitations, in any manner a licensee desires; however, during a happy hour, the price of alcoholic beverages may not change. 40 Pa. Code § 13.102(a)(4). *Notice of all happy hours must be posted on the licensed premises seven days prior to each happy hour.* 47 P.S. § 4-406(g) (emphasis added).

Further, please note that no discount pricing may occur between 12:00 a.m. (midnight) and the legal closing hour, i.e. 2:00 a.m., for most retail licensees. 40 Pa. Code § 13.102(a).

In response to your question, there is nothing in the Liquor Code or PLCB Regulations that would allow for a “grace period” in which patrons may be charged the happy hour price for any period of time after the posted happy hour has ended, even if the patrons are already standing in line.

However, Mixtape, LLC would be permitted to extend its happy hour, as long as it does not exceed four consecutive or non-consecutive hours per day, and fourteen hours per week and as long as notice of the change in happy hour is posted on the licensed premises seven days prior to each happy hour. Since any happy hour must be posted on the licensed premises seven days prior, bartenders may not extend happy hour to accommodate patrons standing in line after happy hour has ended.

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

LCB Advisory Opinion No. 18-446