

January 3, 2019

Keith D. Smith
President
Sarver Veteran's Club
VIA E-MAIL

RE: All Day Drink Specials

Dear Mr. Smith:

ISSUE: This office is in receipt of your e-mail dated November 8, 2018, wherein you indicate that Sarver Veterans Club currently offers an "All Day Beer Special" ("Special") every Thursday, from open until close. In accordance with the Special, all beers, including drafts, bottles, and cans, are discounted. You note that a current employee "insists" the Special is legal because the price of the beer changes in accordance with the Special. Specifically, you ask whether such offer is permissible and in accordance with the Liquor Code.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Sarver Veterans Club holds Club Liquor License No. C-5546 (LID 2544) for the premises located at 641 Sarver Road, Sarver, Pennsylvania.

OPINION: Initially, because you are involved in a highly-regulated industry, it is recommended that you consult private counsel experienced in Pennsylvania liquor law. Further, note that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("BLCE"), and not the PLCB, that is authorized to enforce the Liquor Code and the PLCB's Regulations.

Retail licensees may discount the prices of alcoholic beverages to their patrons under limited circumstances, including happy hour and daily drink specials. Otherwise, discounting alcoholic beverages is a violation of section 493(24)(i) of the Liquor Code. 47 P.S. § 4-493(24)(i).

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).

With regard to daily drink specials, a retail licensee is permitted to offer one specific type of alcoholic beverage at a discounted price all day, or for a portion of the day, if it chooses. 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. The following are examples of permissible daily beer specials: a specific brand of beer such as “Blue Hound Pilsner” or “Brendan’s Cream Stout” or “Oil City Light,” but not “all draft” or “all bottled” beer or “all Blue Hound products.” Daily wine specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall’s 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 (Amended).

With regard to your inquiry, as stated, a daily drink special may be offered on one specific type of alcoholic beverage, including a specific registered brand of malt or brewed beverages, not “all drafts” or “all beers.” Here, the Special you offer at the club discounts all beers, not one specific type of beer. Therefore, the Special is impermissible and violates the daily drink special provisions. If, however, the Special is offered on one specific type of beer (e.g., Bud Light), then the Special would be permissible. Alternatively, if your club wishes to discount all beers, it may do so through a happy hour special; however, such happy hour special cannot exceed four consecutive or non-consecutive hours per day and not to exceed fourteen hours a week. 47 P.S. §§ 1-102, 4-406(g); 40 Pa. Code § 13.102(a).

Alternatively, your club may discount all beers as part of a “mug club.” Retail licensees are permitted to offer a “mug club” to their patrons. Such an offer will not be construed as an unlawful inducement. 47 P.S. § 4-493(24)(iii). “Mug club” is defined in the Liquor Code as a group organized by a retail licensee or a brewery whose members are entitled to discounted malt or brewed beverages. 47 P.S. § 1-102.

Please note that membership in the mug club shall be by written application and the licensee must maintain a written list of active members as part of its records. Id. Also, licensees may charge an annual fee and a renewal fee. Lastly, no discounting of malt or brewed beverages may occur after midnight.

Mug club discounts are not counted against a licensee's maximum number of hours during which it may offer happy hour pricing (see e.g., 47 P.S. §§ 4-406(g), 4-442(g)). However, no discounted malt or brewed beverages may be provided between 12:00 a.m. and 7:00 a.m. 47 P.S. § 1-102.

Should you have any additional questions, please do not hesitate 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, Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 18-478