

May 18, 1998

Dara Nye
JAN'S FRIENDLY TAVERN & RESTAURANT
R.D. 1, Box 88
Newport, PA 17074-9746

**RE: Discount Pricing Practices; Proposed Advertisement;
Things of Value Offered as Inducement**

Dear Ms. Nye:

ISSUE: This office is in receipt of your April 15, 1998 letter in which you request information about whether a proposed advertisement and its substantive content comply with the Liquor Code and the Board's regulations. You also requested general information regarding happy hour discount pricing practices, meal packages, brand name advertising, bar spending/giving free drinks, interior displays, window and doorway displays, and exterior displays/outside/outdoor advertising.

OPINION: Section 13.102 of the Board's regulations [40 Pa. Code §13.102], a copy of which is enclosed, provides that retail licensees may discount the price of alcoholic beverages for a consecutive period of time not to exceed two hours in a business day, but may not engage in discount pricing practices between 12 midnight and the legal closing hour. Section 13.102(b)(3) [40 Pa. Code §13.102(b)(3)] permits the additional offering for sale of one specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price, if the offering does not violate subsection (a) which prohibits two for one specials, an increased volume without a corresponding increase in price, "all you can drink" specials and changing the price within the two-hour happy hour period.

Additionally, section 493(24) of the Liquor Code [47 P.S. §4-493(24)] provides that a retail licensee may not offer or give or solicit or receive anything of value as a premium to induce directly the purchase of liquor or malt or brewed beverages. Please also be advised that, effective March 21, 1998, Board regulation 13.102(b) deleted the meal package exception to prohibited discount pricing practices. This means that an unlimited or indefinite amount of alcoholic beverages may no longer be served with a meal package.

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Based on our review of your proposed advertisement and menu offering, please be advised of the following:

Your Monday menu special appears to offer one dozen wings as an inducement for the purchase of liquor or malt or brewed beverages in violation of section 493(24). Specifying a separate price for "small pitchers of draft beer" as your daily special and "all draft beer 50 cents off" as your happy hour special would comply with the Liquor Code and the Board's regulations.

Your Tuesday menu special appears to comply with the Liquor Code and the Board's regulations, so long as: 1) the 10-ounce drafts are regularly \$1.00 and are being discounted to \$.50 for purposes of your happy hour; and 2) they are being offered only for the two-hour happy hour period. If not, your Tuesday special would be in violation of section 13.102(b)(2) which allows a daily special to include the offering for sale of one specific type of alcoholic beverage or drink per day at a reduced price. [40 Pa. Code §13.102(b)(2)]. Therefore, your happy hour special could be "all-draft beer \$.50 off", and your daily special would be "Margaritas \$2.00."

Your Wednesday menu special appears to be in compliance with the Liquor Code and the Board's regulations; however, we suggest that you specify "large pitchers of 'draft' beer for \$4.00 from 6 to 9 p.m." Specifying "large pitchers of draft beer" is consistent with section 13.102(b)(2)'s daily special limitation of "one specific type" of alcoholic beverage at a reduced price.

Your Thursday and Friday menu specials would not be permissible for two reasons. One, offering food as an inducement for the purchase of liquor or malt or brewed beverages is a violation of section 493(24) of the Liquor Code; and two, offering an unlimited or indefinite amount of wine or malt or brewed beverages for a set price is a violation of Section 13.102(a)(3) of the Board's regulations. [40 Pa. Code §13.102(a)(3)].

Your Sunday menu special could be brought within compliance of the Liquor Code and the Board's regulations by offering small pitchers of Alabama Slammers for \$8.00 only during the happy hour two-hour period. The Liquor Code and the Board's regulations provide for a two-hour discount pricing period and an additional offering for sale of one specific type of alcoholic beverage or drink per day. Therefore, offering all frozen blender drinks as your daily special and small pitchers of Alabama Slammers for \$8.00 during a two-hour happy hour period would comply with the Liquor Code and the Board's regulations.

With respect to your request for general information in other areas, please find enclosed Advisory Notice No. 10 (4th Revision) relating to trade practices, Advisory Notice No. 15 relating to advertising of alcoholic beverages in Pennsylvania, and Notice to Retail Licensees dated March 31, 1998 regarding the meal package in the discount pricing regulation.

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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.

Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Bureau of Liquor Control Enforcement,
Pennsylvania State Police

Enclosure

Refer to: (717) 783-9454
FAX: (717) 787-8820

LCB Advisory Opinion No. 98-166