

December 1, 1998  
Mr. Mark Barton  
KEARSARGE BEER DISTRIBUTOR, INC.  
City Beer Co.  
2116 Ash Street  
Erie, PA 16503-2123

Dear Mr. Barton:

ISSUE: This office is in receipt of your November 9, 1998 facsimile transmittal in which you forwarded an advertisement which ran in the Erie Times News on October 29, 1998 and November 2, 1998 by the Erie Discount Beer Co. Your conversation with this office on November 30, 1998 revealed that, rather than reporting the existence of the advertisement, you are seeking clarification regarding what is permissible in such an advertisement. To be clear, please be advised that the Pennsylvania State Police, Bureau of Liquor Control Enforcement, and not the Pennsylvania Liquor Control Board, enforces the Liquor Code and Board's Regulations.

OPINION: In the subject advertisement, Erie Discount Beer Co. makes price comparisons to other Erie area distributors. Section 498(a) of the Liquor Code permits wholesalers and retailers inside the Commonwealth to advertise their products and prices in the Commonwealth. [47 P.S. Section 4-498(a)]. No advertisement of price, however, may contain the following: (1) any statement that is false, deceptive or misleading; (2) any statement that is disparaging of the products of a competitor; and (3) any statement referring to monetary comparisons between brands. [47 P.S. Section 4-498(b)(1)-(3)]. It would appear that the advertisement supplied with your letter may violate Liquor Code section 498(b)(2) and 498(b)(3). If you wish to report possible violations of the Liquor Code, please contact the Pennsylvania State Police, Bureau of Liquor Control Enforcement, District Enforcement Office No. 8 at (814) 871-4582.

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

c.c. Pennsylvania State Police,  
Bureau of Liquor Control Enforcement

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

LCB Advisory Opinion No. 98-385