

June 2, 1999
Ellis M. Abramson, Treasurer
W. R. Hickey Beer Distributor, Inc.
1321 E. College Avenue
State College, PA 16801

Dear Mr. Abramson:

ISSUE: This office is in receipt of your April 29, 1999 letter in which you request a legal opinion regarding whether a live radio remote may be conducted at your licensed premises wherein a 'cash cube' would be used to award money and gift certificates to participants twenty-one years of age or older.

W. R. Hickey Beer Distributor Inc. purchases advertising contracts from local radio stations to promote its business. In return for purchasing the advertising contracts, the radio stations provide W. R. Hickey with value-added items above and beyond the cost of the contract, one of which is a live radio remote broadcasts. At your next remote, you would like to use a 'cash cube,' a telephone booth-unit with a fan attached, which would blow dollar bills and gift certificates around inside the cube. Qualified individuals twenty-one years of age or older would enter the cube while the fan blew dollar bills and gift certificates. The person would try to collect as many dollar bills and gift certificates as possible.

According to our conversation on May 13, 1999, the gift certificates would be for advertising novelties (i.e., t-shirts, etc.) with a value of less than \$15.00. Each person, twenty-one years or older, who enters your showroom will be provided with a ticket (no purchase necessary), and a drawing will determine which individuals are permitted to enter the box. The promotion will take place on your distributor licensed premises.

OPINION: Using the 'cash cube' on your licensed premises during a live radio remote would be permissible provided no unlawful gambling is associated with its use. Unlawful gambling consists of three elements: 1) consideration or paying to play; 2) an element of chance; and 3) a prize or reward. If all these elements exist, the activity could constitute unlawful gambling. It does not appear as though the promotion that you are proposing involves unlawful gambling; however, since gambling is a Crimes Code provision, you should contact the local police, your county district attorney's office or the Pennsylvania State Police for an official opinion.

Section 493(24) of the Liquor Code prohibits licensees from offering or giving to trade or consumer buyers any prize, premium, gift or other inducement to purchase malt or brewed beverages, except advertising novelties with a value of \$15.00 or less. [47 P.S. Section 4-493(24); 40 Pa. Code Section 13.52, PLCB Advisory Notice No. 10 (Fourth Revision)]. As long as your prizes are valued at less than \$15.00, you would be permitted to offer them in conjunction with the cash cube.

Please do not hesitate to contact this office if you have any further questions.

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

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

LCB Advisory Opinion No. 99-199