

October 13, 1999 Telephone: 717-783-9454

FAX: 717-787-8820

Adam Simon

The Montgomery Grill

261 Montgomery Avenue

Bala Cynwyd, PA 19004

Dear Mr. Simon:

ISSUE: This office is in receipt of your October 1, 1999 facsimile transmittal with which you attached a copy of an advertisement setting forth the various promotions and drink specials you will offer at your retail licensed establishment during the week. You seek the opinion of this office regarding the appropriateness of the advertisement and the specials. It is your intention on ladies' night to run drink specials available to all patrons, and you will not discriminate.

OPINION: Section 13.102 of the Board's Regulations regulates discount pricing practices by retail licensees in the Commonwealth of Pennsylvania. [40 Pa. Code Section 13.102]. This section provides that retail licensees may discount the price of alcoholic beverages for a period of time not to exceed two consecutive hours in a business day, but may not engage in discount pricing practices between midnight and the legal closing time. Multiple servings or sales of drinks for the price of one at any one time to any one person, increased volume drinks without corresponding price increases, sale or serving of unlimited amounts of alcohol for a set price and price fluctuation within the two-hour period are forbidden.

In addition to the 'happy hour' provision, section 13.102(b)(2) of the Board's Regulations states that licensees may offer one type of alcoholic beverage or drink per day at a reduced price as long as the discount ends by midnight. Therefore, it is permissible for a retail licensee to offer one special drink at a discounted price for all or part of a business day up to midnight. Both the happy hour and the additional drink special promotions may be run during the same business day under the conditions stated above.

As long as the promotions you propose are conducted in accordance with section 13.102 of the Board's Regulations, they would be permissible. Be advised that promotions in which only female patrons receive reduced prices on drinks are not permissible because they violate the Pennsylvania Human Relations Act concerning discrimination based on gender. Discriminatory

practices involving other areas such as race, age, or national origin are similarly prohibited. If, however, the drink special on ladies' night would be offered to all patrons (i.e. both men and women), and would not be discriminatory, it would be permissible. Be aware, however, that section 498 of the Liquor Code, which prohibits unlawful advertising, provides that no advertisement of alcoholic beverages may contain any statement which is false, deceptive or misleading. [47 P.S. Section 4-498(b)(1)]. Advertising a special for the ladies when there really is not one could be considered false, deceptive or misleading.

For your information, enclosed please find copies of section 13.102 of the Board's Regulations, section 498 of the Liquor Code, and LCB Advisory Notice #15.

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: Pennsylvania State Police,
Bureau of Liquor Control Enforcement

Enclosures

LCB Advisory Opinion No. 99-339