

October 21, 1999 Telephone: 717-783-9454  
FAX: 717-787-8820

Edgar H. Bedwell, President

BEVERAGE DISTRIBUTION, INC.

746 Locust Avenue

Washington, PA 15301

Dear Mr. Bedwell:

ISSUE: This is in response to your letter of September 27, 1999 to the Malt Beverage Compliance Unit of the Pennsylvania Liquor Control Board, which was forwarded to this office. You ask whether a newspaper advertisement which you ran in June, 1999 was lawful. The ad included the offer to the general public of a free sleeve of fifty cups with a retail value of \$1.99 (your cost \$.99) with the purchase of a half-keg of beer from your distributorship. You note that you received a warning from the Pennsylvania State Police, Bureau of Liquor Control Enforcement concerning the ad.

OPINION: Assuming that the cups are imprinted with a beer logo or have advertising on them, the promotion is permissible. As the Bureau noted in its warning, section 493(24) of the Liquor Code generally prohibits the giving of anything of value to induce the purchase of alcohol. [47 P.S. Section 4-493(24)]. An exception to this general rule, however, allows the offering of novelty items of nominal value with the purchase of alcohol. The Board has defined advertising novelties as any item with a wholesale cost of \$15.00 or less which advertises a licensee or manufacturer. [PLCB Advisory Notice No. 10, 5th Revision]. Examples of such items are matches, disposable lighters, bottle or can openers, t-shirts, caps, corkscrews, pens, pamphlets and ashtrays. Your sleeves of fifty 16-ounce cups are well under the maximum value for an advertising novelty, and assuming they contain advertising matter on them, they would fall under the exception.

Be aware, however, that section 493(17) of the Liquor Code deems it unlawful for any licensee to provide equipment or fixtures to other classes of licensees. [47 P.S. Section 4-493(17)]. Thus, even if the cups are advertising novelties, they may be construed as equipment if provided to trade buyers, and thus, should not be distributed to other classes of licensees. Perhaps because your advertisement did not clearly indicate that the offer was for non-licensed customers of your distributorship, you received the warning. In any case, assuming your cups meet the definition of advertising novelties and are distributed only to non-licensed customers, the equipment prohibition would not apply, and your promotion would be lawful.

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

R. Kaskiel

LCB Advisory Opinion No. 99-349