

November 9, 1999

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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 October 1, 1999 to the Liquor Control Board's Malt Beverage Compliance Unit, which was forwarded to this office on October 21, 1999 for response. You ask whether a series of advertisements you wish to run in your local newspaper would be lawful. Your company holds an importing distributor license. On alternating weeks, you would run ads for your off-premise (distributors) and on-premise (retail licensees) accounts to feature prices and special events, respectively. The advertising slots would be limited to twelve weekly; however, the program would be open to all of your accounts. The ads would list the name of the account and/or its business logo, the product feature and price, or the special event. You would restrict brands to what your company carries and would use brand logos from your products. The advertising would be paid for monthly by your company. You would not permit two distributor accounts to run the same price feature on the same product in the same ad; nor would you allow retail accounts to advertise free items or quantity drink specials.

OPINION: Section 498 of the Liquor Code [47 P.S. Section 4-498] and Advisory Notice No. 15, copies of which are both enclosed, contain the current laws on advertisements of alcoholic beverages. Generally, the advertisement of prices is permissible, assuming that the advertiser complies with the restrictions found in section 498. Similarly, the advertisement of special events at retail licensed establishments would be permissible under the same restrictions.

There is a different problem, however, with the advertisements. First, section 13.51(a) of the Board's Regulations [40 Pa. Code Section 13.51(a)] prohibits any licensee or group of licensees from directly or indirectly contributing to or accepting from another licensee of a different class anything of value, including advertising. Joint or cooperative advertising has been permitted, however, in situations where each licensee is paying for its respective share of the advertisement. Therefore, unless your retail accounts will be paying for their share of the advertisements, their inclusion in those ads would not be permissible.

Second, as an importing distributor, you must comply with the provisions of section 13.41 of the Board's Regulations. [40 Pa. Code Section 13.41]. That section allows importing distributors to include the names and addresses of all distributors (and importing distributors) to whom they sell in the locality covered by the advertising. No discrimination may be shown to one distributor or importing distributor over another, and where more than one of them purchases the products from your company in the area covered by the advertisement, the names and addresses of all who purchase the product directly from the advertiser (you) must be displayed or mentioned in equal prominence. Where this is not done, none may be displayed or mentioned.

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. 99-362