

December 3, 1999

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Gary Wisniewski
General Manager
Banana Joe's of Pittsburgh
1910 Smallman Street
Pittsburgh, PA 15222

Dear Mr. Wisniewski:

ISSUE: In a letter received by this office on November 15, 1999 you inquire as to the legality of a happy hour promotion to be conducted as follows: from 9:00 p.m. to 9:30 p.m. all drinks are to be 25 cents with a 25-cent increase every half-hour. (For example, 9:30 p.m. to 10:00 p.m. all drinks will be 50 cents, from 10:00 p.m. to 10:30 p.m. all drinks will be 75 cents). The promotion is to be run for the two hours of allotted happy hour, and is to be advertised as 'beat the clock'.

OPINION: Section 13.102(a) of the Board's regulations provides that retail licensees may discount the price of alcoholic beverages for a consecutive period of time not to exceed two hours in a business day, provided that the licensee does not engage in discount pricing practices between twelve midnight and the legal closing hour of the licensed establishment. However, section 13.102(a)(4) prohibits licensees from pricing alcoholic beverages in a manner which permits the price to change within the two-hour period. [40 Pa. Code Section 13.102(a)(4)]. Therefore, the proposed happy hour promotion is impermissible.

In the future, inquiries may be made directly to the Pennsylvania Liquor Control Board, Office of Chief Counsel, 401 Northwest Office Building, Harrisburg, Pennsylvania 17124.

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

LCB Advisory Opinion No. 99-384