

March 29, 2007

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JoAnn O'Connell  
Strasburg Railroad Company  
P.O. Box 96  
Strasburg, PA 17579  
**VIA FACSIMILE:** (717) 687-6194

**RE: Wine Tasting Conducted by Public Service Licensee in  
Dry Township**

Dear Ms. O'Connell:

ISSUE: This letter is in response to your correspondence to this office dated February 21, 2007, in which you advise that you are interested in having wine tasting at your railroad this summer on the First Class Parlor car. You further advise that your township is dry for the sale of liquor, and, as a result, you do not sell alcohol while the trains are at the station. You would like to know whether conducting such wine classes at the station would be permissible. You advise that this will be an informational event at which no alcoholic beverages will be sold. You enclosed information regarding the tasting from the Wine School of Philadelphia.

Based upon the information provided, "The Classic Wine Tasting Event" consists of an instructor heading a tasting for twenty-four (24) or more persons. The total price is six hundred dollars (\$600.00), or approximately twenty-five dollars (\$25.00) per participant, which includes two (2) hours of wine instruction, custom wine tasting sheets, up to eight (8) selections of wines, and a special online posting about the wine tasting.

According to Board records, the Strasburg Railroad Company holds Public Service Liquor License No. P-128 (LID 56179).

OPINION: Section 408 of the Liquor Code provides for the establishment of public service liquor licenses to, among other entities, railroad or pullman companies that permit liquor or malt or brewed beverages to be sold to passengers for consumption while enroute on such trains or railcars. [47 P.S. § 4-408(a)]. Public service liquor licensees are prohibited from selling alcohol while standing in stations or terminals within a municipality that prohibits on-premises consumption of alcohol. [Id.]. Sales of liquor and malt or brewed beverages by a public service liquor licensee shall be made in accordance with the laws related to the sales of alcohol by restaurant licensees. [47 P.S. § 4-408(e)].

Section 472 of the Liquor Code provides a local option regarding the ability of the electorate of a municipality to vote on the issue of allowing the placement of a licensed premises to sell liquor, including wine, as well as malt or brewed beverages within the particular municipality. [47 P.S. § 4-472]. In light of the fact that Strasburg Township is dry for the sale of liquor, as you appear to be aware, the railroad may not sell liquor, including wine, on a train while the train sits at the station.

Tastings or tasting events are defined in the Board's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education of the public as to quality and availability. [40 Pa. Code § 13.201]. Tastings may be conducted by licensed brokers, distributors, importing distributors, and manufacturers or their agents upon licensed or unlicensed premises. [40 Pa. Code § 13.211(a)]. Any products used shall be legally procured and properly registered, and taxes on the products shall be paid. [40 Pa. Code § 13.211(b)(1)]. There can be no purchase requirements associated with the tasting. [40 Pa. Code § 13.211(b)(2)]. Finally, no more than one (1) standard-size alcoholic beverage of each product shall be provided to each participant. [40 Pa. Code § 13.211(b)(3)]. A standard-size serving of wine is four (4) fluid ounces. [40 Pa. Code § 13.201].

The offering of wine to students for analytical tasting for educational purposes could be considered a sale of alcohol, assuming that the students have paid tuition or a fee to participate in the classes that you will offer. [47 P.S. § 4-491(1)]. It is not clear from your letter whether you intend to charge participants for participating in the wine tasting event. If participants are charged, in any way, for their participation in "The Classic Wine Tasting Event," then this would be considered a sale of alcoholic beverages to those participants. Therefore, if the tasting is conducted while the train is at the station, this would not be permissible

as it would constitute a sale of alcoholic beverages in violation of the municipality's local option. It would be permissible, however, to conduct such a tasting while the train is enroute.

In the alternative, if the tuition or fee for a tasting is applied only to the educational program, and the wine is available, in the same manner, without payment, to all persons twenty-one (21) and older who inquire, whether enrolled in the class or not, then such a tasting may occur while the train is at the station. Were anyone to request tasting the wine without paying the fee for the instruction time and materials or for any other purpose, however, they must be permitted to do so, free of charge. Otherwise, this would be considered selling alcoholic beverages in violation of the municipal local option. Please note that it would be permissible for students to provide wine to be used in such tastings.

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  
Jerry W. Waters, Sr., Director,  
Bureau of Licensing

LCB Advisory Opinion No. 07-107

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