

August 11, 2008

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Kristin Hess
Half Moon Restaurant & Saloon, Ltd.
108 West State Street
Kennett Square, PA 19348-3021

RE: Donated Wine for Fundraiser

Dear Ms. Hess:

ISSUE: Your July 1, 2008 e-mail indicates that Half Moon Restaurant & Saloon, Ltd., is planning an onsite fundraiser event for a local dog training group. You ask for advice on the correct way to receive wine from your vendors to be auctioned on the day of the event. Board records reflect that Half Moon Restaurant & Saloon, Ltd. holds Restaurant Liquor License No. R-12090 and that you are a director and stockholder.

OPINION: Sections 491 and 492 of the Liquor Code make it unlawful for any person to possess any beer, wine or liquor within Pennsylvania that has not been purchased through a Pennsylvania Liquor Store, a licensed limited winery or from an entity licensed to sell malt or brewed beverages. [47 P.S. §§ 4-491(2), 4-492(3)].

Section 13.51 of the Board's Regulations provides that no licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees, or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device for any purpose. [40 Pa. Code § 13.51]. Accordingly, a retail licensee would be prohibited from accepting donations of wine from manufacturer or distributor licensees.

However, nothing in the Liquor Code or the Board's Regulations would prohibit the manufacturers and other contributors from donating liquor, wine or beer to non-licensee patrons or organizations, so long as the donation is coordinated through the Board's Bureau of Product Management. Those non-licensee patrons or organizations may then bring it onto licensed (or unlicensed) premises. Note that licensees are strictly liable for violations of the Liquor Code and the Board's Regulations which occur on their premises. Non-profit, charitable organizations registered with the Department of State are permitted to receive donations of wine and liquor directly from suppliers or wholesalers from outside the Commonwealth, so long as the proper paperwork is submitted to and cleared by the Board. [See 40 Pa. Code §§ 9.41, 9.51]. In order to obtain the paperwork necessary to import the alcohol under those limited circumstances, the charitable foundation should contact Alma Kocher in the Bureau of Product Management at (717) 783-8237.

No matter how a recipient organization obtains its donated alcohol, it may not sell the alcohol on licensed premises, like yours, or anywhere else, unless it has a permit or license issued by the Board to do so. [47 P.S. §§ 4-491(1), 4-492(3)]. In the absence of such a permit or license, the organization may only provide alcohol to its guests if it is free of charge. The organization must also take care only to provide alcohol to those participants at least twenty-one (21) years of age who are not visibly intoxicated. [47 P.S. § 4-493(1)]. If, in order to obtain alcohol at the proposed event, guests must pay a donation or admission, such practice could be viewed as though the organizations are selling alcohol without a license in violation of Liquor Code section 491(1), unless the donation or admission covered food and entertainment only and anyone could obtain alcohol, whether or not they have paid a donation or admission. [47 P.S. § 4-491(1)].

In order to auction bottles of wine, an organization must apply for and be granted a permit. Certain eligible entities as enumerated in section 102 of the Liquor Code [47 P.S. § 4-102] may apply for a special occasion permit ("SOP") that is generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. [47 P.S. § 4-408.4].

Eligible entities are defined in section 102 as:

... a city of the third class, a hospital, a church, a synagogue, a volunteer fire company, a volunteer ambulance company, a volunteer rescue squad, a unit of a nationally chartered club which has been issued a club liquor license, a club in a city of the third class which has been issued a club liquor license and which, as of December 31, 2002, has been in existence for at least 100 years, a library, a

nationally accredited Pennsylvania nonprofit zoological institution licensed by the United States Department of Agriculture, a nonprofit agricultural association in existence for at least ten years, a bona fide sportsmen's club in existence for at least ten years, a nationally chartered veterans' organization and any affiliated lodge or subdivision of such organization, a fraternal benefit society that is licensed to do business in this Commonwealth and any affiliated lodge or subdivision of such fraternal benefit society, a museum operated by a nonprofit corporation in a city of the third class or township of the first class, a nonprofit corporation engaged in the performing arts in a city of the third class, borough or in an incorporated town, an arts council, a nonprofit corporation that operates an arts facility or museum in a city of the third class in the county of the fourth class, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to protect the architectural heritage of boroughs and which has been recognized as such by a municipal resolution, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) conducting a regatta in a city of the second class with the permit to be used on State park grounds or conducting a family-oriented celebration as part of Welcome America in a city of the first class on property leased from that city for more than fifty years, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) whose purpose is to raise funds for the research and treatment of cystic fibrosis, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) whose purpose is to educate the public on issues dealing with watershed conservation, a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) whose purpose is to provide equine assisted activities for children and adults with special needs, a nonprofit economic development agency in a city of the second class with the primary function to serve as an economic generator for the greater southwestern Pennsylvania region by attracting and supporting film, television and related media industry projects and coordinating government and business offices in support of a production, a county tourist promotion agency as defined in section 3(1) of the act of April 28, 1961 (P.L. 111, No. 50) , known as the 'Tourist Promotion Law,'

and located in a city of the third class in a county of the fourth class or located in a township of the second class in a county of the fifth class, a junior league in a third class county that is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c)(3)) that is comprised of women whose purpose is exclusively educational and charitable in promoting the volunteerism of women and developing and participating in community projects and that has been in existence for over seventy years or a nonprofit organization as defined under section 501(C)(6) of the Internal Revenue Code of 1986 which is located in a city of the third class in a county of the third class and whose purpose is to support business and industry.

The holder of such a permit is authorized to sell liquor and/or malt or brewed beverages to persons of legal age on any day for which the permit is issued and in any municipality in which the electorate has approved the sale of liquor and/or malt or brewed beverages. The permit may be used for special events at which the permittee is raising funds for itself. A permit holder may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. the following day.

Be advised that if the event for which the special occasion permit is obtained is to be located on an area that is part of your licensed premises, since such a permit designates a particular licensed area for the sale of alcohol, it would be necessary for you to temporarily de-license the portion of the licensed premises where the sale of alcohol by the permit holder would take place. Absent exceptions that are not relevant in the instant case, the Bureau of Licensing will not “dual-license” a particular location.

In addition, certain entities may apply for a wine auction permit. Pursuant to section 408.12(a) of the Liquor Code [47 P.S. § 4-408.12(a)] the following entities are eligible for such a permit:

- (1) any nonprofit hospital;
- (2) any nonprofit public television station which is a member of the Pennsylvania Public Television Network;
- (3) any orchestra located in a county of the first, second or third class which is operated by a nonprofit corporation;

- (4) any museum located in a county of the first, second or third class which is operated by a nonprofit corporation;
- (5) any nonprofit corporation located in any county of the third class which trains and places dogs for people who are physically handicapped;
- (6) any nationally recognized community-based voluntary health organization committed to fighting cancer which has been in existence for at least ninety years;
- (7) any nationally recognized emergency response organization that offers humanitarian care to victims of war or natural disaster and has been in existence for at least one hundred twenty-five years;
- (8) any nationally recognized organization whose purpose is to serve as an agent to collect funds for local charities, as well as to coordinate relief services, counsel and refer clients to cooperating agencies and make emergency assistance grants and has been in existence for at least one hundred twenty years; or
- (9) any hospice as defined under section 802.1 of the act of July 19, 1979 (P.L. 130, No. 48), known as the "Health Care Facilities Act";

This permit is issued for a period for not more than four (4) consecutive or non-consecutive days per calendar year and authorizes the permittee to sell wine by auction, by the bottle or case, to any person on any day for which the permit is issued provided that the permit is issued in a municipality in which the sale of liquor and malt or brewed beverages has been approved by the electorate. Wine auction permits are issued to eligible entities for use at an event that is used for the permittee as a means for raising funds for its operation. Wine auction permittees may sell wine between the hours of 7:00 a.m. and 2:00 a.m. of the following day. Any wine that is sold by the permittee must either be purchased from a Pennsylvania wine and spirits store, Pennsylvania limited winery, or any seller authorized to sell wine by the bottle or case in Pennsylvania, or wine that is donated by a person who is neither a licensee nor a permittee who has legally acquired the wine and legally possesses it in the Commonwealth.

Please do not hesitate to contact this office if you have any additional 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
Alma Kocher, Bureau of Product Management

LCB Advisory Opinion No. 08-335

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