

April 10, 2009

Telephone: 717-783-9454

Fax: 717-787-8820

Judith W. Nissley, President
Nissley Vineyards
140 Vintage Drive
Bainbridge, PA 17502
RE: Wine Donation

Dear Ms. Nissley:

ISSUE: This office is in receipt of your e-mail correspondence of March 17, 2009, wherein you indicate that your winery, the J.R. Nissley Family Vineyards & Winery Estate, is often asked to donate wine for charitable and other events. You inquire about any legal restrictions in the Commonwealth of Pennsylvania concerning the donation of wine for door prizes, raffles and wine auctions.

Pennsylvania Liquor Control Board ("Board") records indicate that A & R Nissley, Inc., t/a The J.R. Nissley Family Vineyards & Winery Estate, holds Limited Winery License No. LK-17 (LID-8858) for the premises located at 140 Vintage Drive, Bainbridge, Pennsylvania.

OPINION: In response to your inquiry, section 491(2) of the Liquor Code makes it unlawful for any person to possess any liquor or alcohol within Pennsylvania that has not been purchased through a Pennsylvania wine and spirits store or a licensed limited winery. [47 P.S. § 4-491(2)].

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]. Therefore, you would be prohibited from contributing wine to a retail licensee, such as a restaurant, would be prohibited from accepting a donation of wine from you.

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Regarding your inquiry about wine donations for door prizes and raffles, please keep in mind that raffles and door prizes may constitute unlawful gambling. For an event to constitute unlawful gambling, the following three (3) elements must be present: 1) consideration or paying to play; 2) an element of chance; and 3) a prize or reward. Section 5.32(f)(2) of the Board's Regulations specifically provides that the licensee will be held strictly liable for unlawful gambling activities. [40 Pa. Code § 5.32(f)(2)]. Because illegal gambling is a Pennsylvania Crimes Code violation, this office cannot provide you with a legal opinion regarding whether proposed raffles constitute unlawful gambling. Thus, it is suggested that you contact your local law enforcement authority, the State Police, or your local district attorney for an interpretation as to whether these activities constitute unlawful gambling. Further, certain types of otherwise unlawful gambling may be permissible under the Small Games of Chance Act. Since the Department of Revenue, the county treasurer's office and the county district attorney's office are included in the issuance and monitoring of those licensees, you may wish to contact those entities with your inquiry. The Department of Revenue's Small Games of Chance office may be contacted at (717) 787-8275.

Regarding your inquiry about wine auctions, the non-profit organization itself would be prohibited from auctioning off the donated wine unless it held a license or permit from the Board to do so. Certain entities as enumerated in section 408.4 of the Liquor Code [47 P.S. § 4-408.4] may apply for a special occasion permit that is generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. 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.

In addition, certain entities, as enumerated in section 408.12 of the Liquor Code [47 P.S. § 4-408.12], may apply for a wine auction permit. 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

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is neither a licensee nor a permittee who has legally acquired the wine and legally possesses it in the Commonwealth.

Should the non-profit organization wish to apply for either a special occasion permit or a wine auction permit, it should contact the Board's Bureau of Licensing at (717) 783-8250 to obtain the necessary forms, or it may obtain additional information via the Board's website at www.lcb.state.pa.us.

Therefore, your winery, the J.R. Nissley Family Vineyards & Winery Estate, would be permitted to make a wine donation, if you so choose, subject the criteria as set forth above.

Alternatively, a manufacturer such as your winery, the J.R. Nissley Family Vineyards & Winery Estate, can always make a financial donation to the charity, which in turn the non-profit organization can use to purchase items for door prizes, raffles and auctions from the Board and/or your limited winery.

Should you have any further questions or concerns regarding the Liquor Code or the Board's Regulations, please do not hesitate to again contact this office.

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, Office of Regulatory Affairs
Jane Melchior, Director, Bureau of Licensing

LCB Advisory Opinion No. 09-126