

August 14, 2013

Telephone: (717) 783-9454

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Michael E. Collins, Jr.
The Merion Cricket Club
325 Montgomery Avenue
Haverford, PA 19041

Re: Wine Auctions for Licensee

Dear Mr. Collins:

ISSUE: This is in response to your e-mail sent on July 22, 2013, wherein you ask if your catering club may buy wine from auctions – in-state, out-of-state, and online – and then re-sell the wine to your customers. You also request information as to the process and laws governing the purchasing and re-sale of auctioned wine.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that The Merion Cricket Club holds Catering Club License No. CC-50 (LID 2828) for use at its premises located at Montgomery Avenue, Haverford, Pennsylvania.

OPINION: Be advised that the Board has the general authority to control the manufacture, possession, sale, consumption, importation, use, storage, transportation and delivery of liquor and alcohol within the Commonwealth. [47 P.S. § 2-207(b)]. Generally, all sales of wine must occur through the Board’s wine and spirits stores. Under the Liquor Code, other than the Board, only licensed limited wineries are afforded the statutory ability to sell wine directly to clubs and other retail licensees. [47 P.S. § 5-505.2]. Accordingly, wine sold at retail by your licensed club may only come from one (1) of two (2) sources: the Board or licensed limited wineries.

Be further advised that it is unlawful for anyone in Pennsylvania to possess wine not acquired from a Pennsylvania wine and spirits store, a sacramental wine dealer, a licensed limited winery, or a licensed direct wine shipper. [47 P.S. §§ 4-491(2), 5-505.2, 5-505.4]. Similarly, it is unlawful for any person to import alcohol into the Commonwealth except as permitted within the Liquor Code and the Board’s Regulations. [47 P.S. § 4-491(8), (11)].

Section 410 of the Liquor Code authorizes importation of wine and/or liquor. All such wine and/or liquor must be consigned to the Board or to the principal place of business or authorized place of storage maintained by the licensee. [47 P.S. § 4-410(e)]. Once the wine and/or liquor is properly imported into Pennsylvania via a licensed importer, the product may be stored by the importer at its warehouse or at storage facilities maintained by a bailee-for-hire licensee or a bonded warehouse licensee. [47 P.S. §§ 4-410, 5-501, 5-505.1]. However, a licensed importer is not permitted to sell directly to retail licensees, such as clubs; sales must be made through the Board. [47 P.S. § 4-410(e)].

Therefore, in response to your specific question, it would not be permissible for your club to acquire wine at auction unless it is acquired from a licensed limited winery; nor would it be permissible for your club to sell wine for off-premises consumption.

With regard to wine auctions, be advised that pursuant to section 408.12 of the Liquor Code, only certain entities are eligible to apply for a wine auction permit (“WAP”). [47 P.S. § 4-408.12]. The WAP is issued for a period of 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 which allows such sales. The holder of a WAP may sell wine between 7:00 a.m. and 2:00 a.m. of the following day at events used by the permittee as a means of raising funds for its operation. Any wine that is sold by the permittee must either be purchased from a Pennsylvania wine and spirits store, licensed limited winery or any seller authorized to sell wine by the bottle or case in Pennsylvania; wine legally acquired in Pennsylvania may also be donated by a person who is not a licensee. Please note that the Board’s Bureau of Licensing (“Licensing”), and not this office, is ultimately responsible for reviewing applications for WAPs and approving or rejecting the same.

If you have any additional questions or concerns regarding the Liquor Code or the Board’s Regulations, please feel free 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.

Mike Collins
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Very truly yours,

FAITH S. DIEHL
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-377