

September 23, 2013

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2ND AMENDED OPINION

Jef Zolnier
Apollo Maennerchor Club
391 South Dock Street
Sharon, PA 16148

RE: Wine Tasting Event

Dear Mr. Zolnier:

ISSUE: This office is in receipt of your e-mail dated August 3, 2013, wherein you ask for guidance regarding the following proposed event on your licensed premises. You indicate that you intend to host a wine tasting at which four (4) Erie-area wineries will conduct tastings and sell their products. You state that the event will occur between 7:00 p.m. and 11:00 p.m. and take place in the upstairs hall on your licensed premises. You explain that only club members will be permitted access to the downstairs bar area of your licensed premises. You further state that there will be a flat entry fee or “ticket” required to enter the event. You explain that this fee will cover the cost of food and entertainment and that any profits will go to the club. You ask if such an event is permissible, and if not, how you may structure the event so that it would comply with the law. You also ask who may rent the upstairs hall for the event or if a Special Occasion Permit (“SOP”) would be required.

Pennsylvania Liquor Control Board (“Board”) records indicate that Apollo Maennerchor of Sharon, PA (“Apollo”) holds Catering Club License No. CC-191 (LID 509) for premises located at 391 South Dock Street, Sharon, Pennsylvania.

OPINION: A “tasting” or “tasting event” is defined within the Board’s Regulations as “[a] presentation 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]. In Pennsylvania, prior approval is not required to conduct product “tastings” for market research and for the purpose of educating consumers as to the quality and availability of wines, spirits, and malt or brewed beverages. Tastings may be conducted by sponsors on

licensed or unlicensed premises. [40 Pa. Code § 13.211(a)]. A sponsor may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one (21) years of age or older. [40 Pa. Code § 13.201].

Tastings may be conducted, provided the following conditions are met: (1) the products used are legally procured, properly registered, and taxes paid [40 Pa. Code § 13.211(b)(1)]; (2) there is no purchase requirement associated with the tasting [40 Pa. Code § 13.211(b)(2)]; (3) there is no cooperative advertising associated with the tasting event; (4) wine and spirits manufacturers or their agents are registered pursuant to Board Regulations; and (5) no more than one (1) standard-sized alcoholic beverage of each product shall be provided to each tasting participant. A standard-sized alcoholic beverage is four (4) ounces of wine [40 Pa. Code § 13.211(b)(3)].

As mentioned above, there can be no purchase requirement for a tasting event. Therefore, the alcohol provided must truly be free. In other words, the provision of the alcohol cannot be predicated upon the purchase of an admission ticket, such as you have proposed, a donation or payment of any other fee, etc. Accordingly, anyone who attends the event must be able to request and receive a tasting of wine.

Additionally, be advised that the participating limited wineries would not be permitted to sell their products at your event without first obtaining an "Alcoholic Cider, Wine and Food Exposition Permit." These permits allow limited wineries to participate in wine and food expositions off their licensed premises, to sell wine by the bottle, and to sell or give away samples up to one (1) ounce. [47 P.S. § 5-505.2]. Each permit can be used for only up to **THIRTY (30)** consecutive days and the total number of days for all of the special permits cannot exceed **ONE HUNDRED (100)** days per calendar year. Wine and food expositions are defined as "affairs held indoors or outdoors with the primary intent of educating those in attendance of the availability, nature, and quality of Pennsylvania-produced wines in conjunction with suitable food displays, demonstrations and sales," and may include other activities such as arts and crafts, musical activities, cultural and agricultural exhibits, and similar activities. [47 P.S. § 5-505.2(a)(4)].

However, in order to sell wine, the limited wineries must be located on an unlicensed portion of the premises or you must de-license the portion of the premises that will be used for the event. Since your upstairs hall area is part of the licensed premises, the limited wineries would not be able to sell their products

unless you de-licensed that portion of the premises. For additional information on this process, you may wish to contact the Bureau of Licensing at 717-783-8250.

Regarding your questions about renting the upstairs hall for the event, please note that a licensee may not self-sponsor a catered event. The catered event must be conducted for a third party. Catered events are those involving the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises, or brought onto the premises already prepared, for the accommodation of groups of non-members, who are using the facilities by prior arrangement, made at least twenty-four (24) hours in advance of the time of the function, and which is paid for by the non-members. [40 Pa. Code § 5.83]. If the fundraising event is part of a catered event at the licensed premises, then tickets may be sold. However, as indicated above, there can be no purchase requirement for a tasting; therefore your event could not be called a tasting if you wish to sell tickets as part of a catered event. Further, participating wineries would need to adhere to the conditions set forth above regarding tastings and wine and food expositions off their licensed premises.

Additionally, it may be possible for the local charity to obtain a SOP to conduct the wine tasting event on its own behalf. Pursuant to section 408.4 of the Liquor Code, the Board may issue SOPs to eligible entities. [47 P.S. § 4-408.4]. Entities that qualify may obtain an SOP that would authorize them to sell liquor and/or malt or brewed beverages to persons twenty-one (21) years of age or older who are not visibly intoxicated. [47 P.S. §§ 4-408.4, 4-493(1)]. SOPs are 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(i)]. The SOP is to be used as a means of raising funds for the holder, but can be used in conjunction with activities or events involving other entities. [47 P.S. § 4-408.4(m)]. The holder of an SOP may sell alcoholic beverages during the hours of 7:00 a.m. until 2:00 a.m. of the following day. [47 P.S. § 4-408.4(k)]. Please be advised, however, that if the proposed event will be conducted on the licensed premises, it would be necessary for you to de-license the area to be used for the SOP, as dual licensing of a particular premises, absent specific statutory authority, is generally prohibited.

Finally, be advised that a club licensee is required to adhere to its constitution and bylaws. [40 Pa. Code § 5.81]. Thus, if the club's constitution and bylaws have restrictions with regard to holding such events at the licensed premises, the club would need to adhere to those restrictions. If the proposed event is permissible under your constitution, then you must abide by the aforementioned rules.

In sum, such an event would be permissible under the following scenarios: (1) limited wineries could sell their products at your event if the limited wineries obtained an "Alcoholic Cider, Wine and Food Exposition Permit;" (2) tickets could be sold if the event was structured as a catered event; and (3) a local charity could sell alcohol if the local charity obtained an SOP to conduct the event on its own behalf.

Please do not hesitate to contact this office should you have 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
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. 13-425