

October 4, 2013

Telephone: (717) 783-9454

FAX: (717) 787-8820

Mary Louise Stoughton
Green Gable Restaurant
7712 Somerset Pike
Jennerstown, PA 15547

Re: Participation in Sandyvale Winefest

Dear Ms. Stoughton:

ISSUE: This is in response to your e-mail sent on September 24, 2013, wherein you ask several questions related to Green Gable Restaurant's ("Green Gable") participation in the Sandyvale Winefest ("Winefest"), which is scheduled for Saturday, October 5, 2013. Green Gable has committed to operating a booth at the festival from which it will serve tastes of wine. You ask for confirmation that it is legal for Green Gable to donate the wine that you will pour at your booth at the Winefest. You note that the Winefest is being held by a charitable organization that does not have a liquor license except for the event; it is assumed that the Winefest is covered by a special occasion permit ("SOP"). You ask if it is legal for you to pour the wine at the event and if there is a specific limit to the quantity of wine you may serve per person.

You further advise that you are interested in selling "general use" certificates at the Winefest for future use at Green Gables. The certificates could be used to pay for any product or service at Green Gables, Mountain Playhouse (a professional summer theater), and Huddleston Court (overnight lodging adjacent to the Green Gables and Mountain Playhouse). You ask if it is legal for you to sell general use certificates. You further ask if you are permitted to sell promotional certificates for specific events, such as for a wine tasting or dinner, or beer tasting and dinner.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Green Gables, Inc., holds Restaurant Liquor License No. R-19621 (LID 20399) for the premises at 7712 Somerset Pike, Jennerstown, Pennsylvania.

OPINION: A retail licensee is only permitted to give, free of charge, one (1) free alcoholic beverage to an individual for consumption *on the licensed premises*; such beverage may be either twelve (12) ounces of beer, four (4) ounces of wine, or one and a half (1½) ounces of spirits. [40 Pa. Code § 13.53]. For off-premises consumption, a retail licensee is only permitted to sell up to one hundred ninety-two (192) ounces of beer in a single sale. Green Gables would not be able to provide any wine off the licensed premises.

Furthermore, although the Board's regulations contemplate wine tastings occurring off licensed premises [40 Pa. Code § 13.211], such regulations only apply to tastings conducted by sponsors. The definition of sponsors includes any "vendor, importer, distributor, importing distributor or manufacturer or its agent or employee," but not retail licensees. [40 Pa. Code § 13.201]. As noted earlier, Green Gables cannot hold a tasting off licensed premises because it is not authorized to provide wine for off-premises consumption, except as set forth below.

Under certain circumstances, if Green Gables obtained an Off Premises Catering Permit ("OPCP"), it would be able to provide food as well as wine for an event located off the licensed premises. However, OPCPs are only permitted for use at a "catered function," which is defined as "the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or *an identifiable group of people, not the general public*, who made arrangements for the function at least thirty days in advance." [47 P.S. § 1-102 (emphasis added)]. Information available on the internet about the Winefest indicates that it is open to the general public and is not limited to an identifiable group of people.

In addition, the Liquor Code requires any licensee who wishes to obtain an OPCP to apply by March 1st of every year: "Any licensee that fails to notify the board and pay the permit fee by March 1 shall be precluded from obtaining the permit for that calendar year." [47 P.S. § 4-493(33)]. The Board's records do not indicate that Green Gables has applied for an OPCP permit; therefore, Green Gables could not obtain an OPCP for this event.

With regard to certificates, please be aware that the Liquor Code prohibits providing anything of value as an inducement to purchase alcohol. [47 P.S. § 4-493(24)(i)]. An exception allows manufacturers and licensees to provide advertising novelties of nominal value, which bear advertising matter, to other licensees and consumers with or without a purchase. [47 P.S. § 4-493(24)(i); see also 40 Pa. Code § 13.52]. "Nominal value" currently is interpreted as fifteen dollars (\$15.00) each, wholesale cost, or less. [Board Advisory Notice No. 10 (6th Revision)].

Nothing in the Liquor Code or the Board's Regulations would prohibit you from selling certificates at full value which could then be redeemed for alcoholic and non-alcoholic products. However, selling a certificate at a discounted price, which could then be used to purchase alcoholic beverages, would be problematic under the discount pricing practices permitted by the Liquor Code and the Board's Regulations.

In each business day, retail licensees may engage in only the following discount pricing practices: a daily drink special and a happy hour. [40 Pa. Code § 13.102]. A daily drink special is the offering of a specific type of alcoholic beverage or drink per day or a portion thereof at a reduced price. [40 Pa. Code § 13.102(b)(2)]. A specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. [Id.].

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With regard to happy hour, retail licensees may discount any or all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum fourteen (14) hours per week. [47 P.S. 4-406(g)]. During this time, the price of alcoholic beverages may not change. Further, the happy hour cannot extend beyond 12:00 midnight. [40 Pa. Code § 13.102(a)].

Because the offering of a discounted certificate for alcoholic beverages, which would presumably be available for redemption at any time at the licensed premises, does not fall within the definition of “daily drink special” or “happy hour,” it is not permitted. If you were to offer a discounted certificate, it could only be used on food or non-alcoholic beverages.

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. 13-432