

May 22, 2014

Telephone: (717) 783-9454

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Amy Creamer
Lucky Ducks Bar & Grille
45 North Market Street

RE: Licensee Participation in Wine Walk

Dear Ms. Creamer:

ISSUE: This office is in receipt of your e-mail dated April 3, 2014, wherein you state that you are co-owner of Lucky Ducks in Elizabethtown. Moreover, you are a participant in a non-profit organization that helps with the revitalization of your downtown. Specifically, the organization is planning to hold its second annual Wine Walk. You state that this is an event where attendees pay a fee and then walk around to several businesses on Main Street to sample food and two ounce (2 oz.) pours of wine from a local winery.

You are specifically writing because you would like to make your licensed establishment the last stop on the walk this year, with the local winery selling its wine at your establishment. You ask whether such sales would be permissible. You further ask if patrons could buy a decorative bag and receive from the winery two (2) "complimentary" bottles of wine. You also ask if it would be permissible for the winery involved in the wine walk to have two (2) different ticket prices depending on whether bottles of wine would be included.

Records maintained by the Pennsylvania Liquor Control Board ("Board") indicate that you are an owner of Lauramy, LLC, t/a Lucky Ducks Bar & Grille, which is the holder of Restaurant Liquor License No. R-19032 (LID 65391) for use by it at its premises located at 45 North Market Street, Elizabethtown, Pennsylvania.

OPINION: At the outset, it should be noted that it is unclear from your e-mail how, and pursuant to what license, this event is being conducted. The Liquor Code provides that certain "eligible entities," as defined in section 102 of the

Liquor Code [47 P.S. § 1-102], may apply for a special occasion permit (“SOP”). The holder of an SOP 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. [47 P.S. § 4-408.4]. This includes sales of any type of alcohol for consumption off the licensed premises. [Id.]. SOPs are generally issued for a period of not more than six (6) consecutive or non-consecutive days during a calendar year. [Id.]. The SOP may be used for special events at which the permittee is raising funds for itself. [Id.]. 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. [Id.]. However, because the purpose of an SOP is to provide the eligible entity with a means of raising funds for itself [47 P.S. § 4-408.4(m)], this office has interpreted this provision to require that all proceeds from the sale of alcohol pursuant to an SOP must be collected by the holder of the SOP. Therefore, individual licensees, including limited wineries, would not be able to sell alcohol for their own benefit under the auspices of the SOP.

However, because your questions deal largely with activities occurring on your licensed premises while the event takes place, it is assumed for purposes of this response that the Wine Walk will be conducted pursuant to an SOP and this response is limited solely to the questions you have posed regarding sale by the limited winery on your licensed premises.

Generally, a licensed limited winery is not permitted to sell alcohol off its licensed premises unless it obtains a license which would permit such sales. If a winery wants to sell alcohol at the event, it must obtain an “Alcoholic Cider, Wine and Food Exposition Permit.” Wine exposition permits allow limited wineries to participate in wine and food expositions off their licensed premises and sell wine by the glass, bottle or in case lots, and sell or give away samples limited to one (1) fluid ounce. A limited winery can obtain a number of special permits per calendar year, but 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 year. The fee is thirty dollars (\$30.00) per day. 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)]. Wine exposition permit applications are available from the Board's Bureau of Licensing ("Licensing") at 717-783-8250, or via the Board's website, www.lcb.state.pa.us.

Please be advised, however, that if the proposed event will be conducted on your licensed premises, it would be necessary for you to de-license the area to be used for the Wine Exposition Permit, as dual licensing of a particular premises, absent specific statutory authority, is generally prohibited. If your premises were part of the wine walk, the limited wineries would not be able to sell their products there unless you de-license that portion of the premises. The remaining licensed portion of the premises would need to continue to meet the definition of a restaurant under section 102 of the Liquor Code [47 P.S. § 1-102] if you wish to use your license during the time in question. Specifically, the licensed portion of the premises must be at least four hundred (400) square feet and have seating for at least thirty (30) patrons. Moreover, an application for a wine exposition permit is processed by the Board's Bureau of Licensing ("Licensing"), and not this office. Therefore, Licensing would need to investigate whether or not this event qualifies as a wine and food exposition and whether or not the location is suitable.

It should also be noted that a licensee may not permit other persons to operate another business on the licensed premises. [40 Pa. Code § 3.52(a)]. Licensed premises may not have an inside passage or communication to or with any business conducted by the licensee or other persons except as approved by the Board. [40 Pa. Code § 3.52(b)]. Therefore, assuming that you de-licensed a portion of the premises to allow a limited winery to operate at your location, Board approval would be required to allow for an interior connection between the winery and your premises.

In response to your decorative bag question, please be advised that wine provided with the purchase of a decorative bag would be considered a sale, and not "complimentary" wine, as purchase of a bag is required in order to receive the wine. As stated above, it is unclear what ticket price would be involved given the SOP holder would be the only entity permitted to sell tickets to the event.

Finally, please be advised that section 493 of the Liquor Code specifically prohibits licensees from selling, furnishing or giving alcohol, and from permitting the sale, furnishing or giving of alcohol, to minors or visibly intoxicated persons, and licensees may be held strictly liable for any violations. [47 P.S. § 4-493(1)].

With regard to liability, you are advised to contact a private attorney well-versed in liquor liability law, as this office cannot provide information on liability or insurance.

If you have any further questions or concerns regarding this matter, 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, Director of Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 14-233