

June 18, 2014

Telephone: (717) 783-9454

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Dahlia Folkes  
Winebow, Inc.  
75 Chestnut Ridge Road  
Montvale, NJ 07645

**RE: Charitable Donation Clarification Request**

Dear Ms. Folkes:

ISSUE: This correspondence is in response to your e-mail and attached letter of May 29, 2014, in which you indicate that Winebow, Inc. is looking for guidance, on behalf of a supplier, about donating wine to a bona fide charitable organization. You explain that: the supplier has created wines specifically for donation to various “9/11” charitable organizations for their event being held at licensed premises in the Commonwealth of Pennsylvania during the Fall of 2014; these specially-created wines are not otherwise available for sale to the general public; and all federal label approvals have been obtained for these wines. Accordingly, you ask whether the donation of these specially-created wines is permissible and whether the wines for donation must be price posted through the system similar to other alcoholic beverages.

The Pennsylvania Liquor Control Board’s (“Board”) records indicate that Winebow, Inc. holds Vendor Permit No. VP-669 and Sales Permit No. SP-555.

It is assumed for purposes of this response that the supplier to which you are referring is not based in Pennsylvania and does not hold any licenses or permits issued by the Board.

OPINION: Please be advised that the donation of wine to unlicensed charitable organizations or charitable organizations operating with a special occasion permit (“SOP”) is usually considered lawful. However, any wine being donated must be lawfully imported into and procured within Pennsylvania.

Generally, only the Board or the holder of a sacramental wine license, an importer's license or a direct shipper's license, is permitted to import any liquor, including wine, into Pennsylvania. [47 P.S. § 491(8), (11)]. While there is an exception set forth in the Board's Regulations that allows for the importation of gift liquor, including wine, by persons residing within the Commonwealth, any liquor imported pursuant to this exception must be for personal use and may not be resold, except by the Board. [40 Pa. Code §§ 9.41, 9.72(b)]. Thus, it is likely necessary for you to inquire about how the charitable organizations plan to utilize the donated wines at their events, as this will dictate how the products must be imported into and procured within Pennsylvania.

If the charitable organizations have no intention of selling the wines at their events and are planning to provide it to attendees free of charge, then it would be permissible for the wines to be imported into Pennsylvania through the gift liquor exception mentioned above. Please be advised that the Liquor Code broadly defines a "sale" as any transfer of liquor, alcohol or malt or brewed beverages for a consideration. [47 P.S. § 1-102]. Thus, in order for the wine to truly be free, there cannot be any payment required, such as the purchase of a ticket, the payment of an admission fee or a donation, in order to obtain access to the alcohol. Rather, anyone who is twenty-one (21) years of age or older and who is not visibly intoxicated must be able to request and obtain access to the alcohol without making a payment of any kind.

In order to utilize the gift liquor exception, the charitable organizations would be required to file an application with the Board and pay a service charge at the rate of twenty-five cents (\$0.25) per gallon or fraction thereof for any alcohol being imported into Pennsylvania. [40 Pa. Code §§ 9.51-9.52]. The application form is available on the Board's website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us), by placing your cursor over "Legal," selecting the "FAQs" link, locating the heading "Importing Alcohol and Beer into Pennsylvania," and then selecting the link for "Application for importation of liquor as provided in regulations of the Board." Any questions relative to completing this form and/or calculation of the service charge should be directed to Bonnie Hedrick in the Board's Bureau of Product Section at (717) 787-7965. Because state taxes would be levied by the Pennsylvania Department of Revenue, applicants should also contact that agency at (717) 783-3680 to determine the amount of taxes, if any, that would be owed on the alcohol being imported.

Once the Board has received the application and the proper service charge, and is satisfied as to the truth of the statements in the application, the Board may, in its discretion, grant and issue a consent certificate permitting the importation of the liquor designated therein and entitling the applicant to obtain the liquor from the transporter or the authority in custody thereof. [40 Pa. Code § 9.53]. The Board will furnish the holder of the consent certificate with a notice of release in duplicate, both copies of which must be signed by the holder of the certificate and surrendered to the carrier for delivery of the liquor. [40 Pa. Code § 9.54 (a)]. The carrier must then sign the original in the space provided and forwarded it to the Board. [Id.]. Before the Board will furnish a notice of release, the holder of the consent certificate must present the Board with a certificate from the Department of Revenue evidencing the payment of the requisite Spirituous and Vinous Liquor Tax upon the liquor, as well as satisfactory proof that the transportation and other charges, if any, against the shipment have been paid. [Id.]. The Board will furnish official seals that are required to be affixed to each bottle by an employee of the Board. [40 Pa. Code § 9.54]. Shipments of gift liquor must be consigned to the holder of the consent certificate in care of the Board. [40 Pa. Code § 9.55]. Shipments consigned otherwise will be considered in the constructive possession of the Board until released by the Board to the holder of the consent certificate. [Id.].

If, on the other hand, the charitable organizations are planning to sell the wines pursuant to an SOP, then it would not be permissible for the wines to be imported into Pennsylvania through the gift liquor exception. [40 Pa. Code § 9.72(b)]. Under this scenario, some person or entity in Pennsylvania would need to purchase the wines from the Board through the special liquor order (“SLO”) process so that the Board and/or a licensed importer could lawfully import the wines into Pennsylvania. Once the wines are lawfully imported into and procured within Pennsylvania, the person or entity who ordered the wine could donate the same to the charitable organizations. Also, there is nothing that would prohibit Winebow, Inc. and/or the unnamed out-of-state supplier from making cash donations to the charitable organizations, which could then, in turn, be used to purchase the wines through the SLO process.

SLOs may be placed at any of the Board’s wine and spirits stores or through the Bureau of Product Selection at 1-800-332-7522. SLOs must be shipped to a wine and spirits store operated by the Board and may be either for personal use or, if purchased by a Board licensee, for resale in any licensed establishment for on-premises consumption. Products purchased through SLOs are subject to the

Board's mark-up, the eighteen percent (18%) liquor tax, the six percent (6%) state sales tax, and any applicable local sales tax. For information on listing products with the Board, including on an SLO basis, please refer to the "Procedures & Policies for Vendors" document, which is available on the Board's website at [www.lcb.state.pa.us](http://www.lcb.state.pa.us) by placing your cursor over the link for "Industry Partners," selecting "Sell Products in PA," and then selecting "Procedures & Policies for Vendors."

Finally, please be advised that if the charitable organizations plan to hold their events as "catered events" at retail licensed premises instead of obtaining an SOP, then any alcohol that is sold at those events would need to be sold by the retail licensee, as opposed to the charitable organizations. Moreover, section 13.51 of the Board's Regulations provides that:

[N]o in-State or out-of-State manufacturer, licensee or group of licensees, . . . may directly or indirectly, . . . contribute to or accept from another licensee . . . 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, it would not be permissible for Winebow, Inc. or the unnamed out-of-state supplier to donate wine to be sold by a retail licensee as part of a "catered event" conducted by the charitable organizations. Rather, the retail licensee would need to purchase the wine from the Board through the SLO process and treat it like any other wine product within its regular inventory.

Should you have any further questions 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.

Dahlia Folkes  
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Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
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Pamela Bernd, Product Selection

LCB Advisory Opinion No. 14-356