June 27, 2014

Telephone: (717) 783-9454
FAX: (717) 787-8820

Adam Redding

RE: Pecuniary Interest

Dear Mr. Redding:

ISSUE: This office is in receipt of your e-mail dated June 4, 2014, wherein you indicate that your limited winery, Good Intent Cider, LLC, is planning to participate in a wine exposition in October of 2014. You explained that you were recently presented with the terms regarding your participation at this event, and you seek clarification regarding the legality of those terms. You state that as payment for your space, the organizers are requesting a base fee of four hundred dollars ($400.00) plus fifteen percent (15%) of your gross receipts. You indicate that you were under the impression that it is not permissible for a limited winery to enter into a contract where rent or lease obligations are based on a percentage of the sales. You ask whether this applies to leases of physical structures and equipment as well as other contracts for payment.

Pennsylvania Liquor Control Board ("Board") records indicate that Good Intent Cider, LLC holds Limited Winery License No. LK-352 (LID 66501) for use at the premises located at 776 Good Intent Road, Gettysburg, Pennsylvania.

OPINION: Please be advised that only the named licensee may have a pecuniary interest in the operation of the licensed business. Thus, any lease agreements, management agreements, employee agreements, commission agreements, and any other type of agreement for payment should be carefully drafted so as to avoid conveying an unlawful pecuniary interest. Section 1.1 of the Board's Regulations defines the term "pecuniary interest" as:

> An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the

> proceeds of the licensed business or when control is exercised by one or more of the following:
>
> (i) Employing a majority of the employees of the licensee.
>
> (ii) Independently making day-to-day decisions about the operation of the business.
>
> (iii) Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1].

In your scenario, you would be required to share fifteen percent (15%) of gross receipts from the sale of alcoholic beverages with the organizers of the event. Thus, pursuant to section 1.1 of the Board's Regulations, there would be a rebuttable presumption of an unlawful pecuniary interest in your license because the organizers of the event would be receiving more than ten percent (10%) of your gross receipts. Therefore, such an agreement could subject you to a citation from the Pennsylvania State Police, Bureau of Liquor Control Enforcement. However, please note that if there is no control by the landlord, then the presumption is rebutted.

Should you have any additional questions, do not hesitate to 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. 14-390