

Kelly Sechrist
VIA E-MAIL: kelly@rainbowdinnertheatre.com

RE: Wine Tastings

Dear Ms. Sechrist:

ISSUE: This office is in receipt of your e-mail dated June 30, 2014, wherein you indicate that you represent Rainbow Dinner Theatre in Paradise, Pennsylvania. You explain that you have an upcoming show called "Drinking Habits." You ask if you may do the following in conjunction with your show: (1) conduct a wine tasting in your lobby; (2) sell or give away wine at the tasting; and (3) permit a winery to sell bottles for people to take home or glasses of wine on your licensed premises. You also ask if there are any promotional restrictions.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Rainbow Productions, Inc., t/a Rainbow Dinner Theatre, holds Restaurant Liquor License No. R-10115 (LID 37544) for use by it at premises located at 3065 Lincoln Highway East, Paradise, Pennsylvania.

OPINION: Initially, regarding wine sales, please be advised that generally wine may only be sold in Pennsylvania for off-premises consumption by the Board, the holder of a limited winery license or the holder of a sacramental wine license. Additionally, patrons of restaurant licensees who have purchased, but only partially consumed, a bottle of wine on the premises may take the bottle with them when they leave, as long as the bottle was purchased in conjunction with a meal which was consumed on the premises, and so long as the bottle is resealed. [47 P.S. Section 4-406(e)]. For purposes of this law, a "meal" means food prepared on the premises, sufficient to constitute breakfast, lunch, or dinner; it does not mean a snack, such as pretzels, popcorn, chips, or similar food. [Id.]. The sale of an unopened bottle of wine for consumption solely off the premises remains unlawful, unless purchased from the Board, a limited winery, or a sacramental wine licensee. Therefore, as a restaurant licensee, you would not be permitted to sell bottles of wine for off premises consumption.

However, you would be permitted to conduct a "tasting" in the lobby area of your premises provided that you adhere to the following conditions. A "tasting" or "tasting event" is defined by 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 Section 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 Section 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 Section 13.201].

When conducted by a sponsor, a tasting is subject to the following: (1) the products used must be legally procured, properly registered, and taxes paid [40 Pa. Code Section 13.211(b)(1)]; (2) there can be no purchase requirement associated with the tasting [40 Pa. Code Section 13.211(b)(2)]; (3) there can be no cooperative advertising associated with the tasting event; (4) wine and spirits manufacturers or their agents must be 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 serving of wine is four (4) ounces. [40 Pa. Code Section 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 and cannot be predicated upon the purchase of an admission ticket, a donation or payment of any other fee. Accordingly, anyone who attends a sponsor-led tasting must be able to request and receive a tasting of wine.

Additionally, be advised that if limited wineries participate in the tasting event, they 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 of up to one (1) ounce. [47 P.S. Section 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. Section 5-505.2(a)(4)]. Further, be advised that it is the Board's Bureau of Licensing ("Licensing") which makes the decision as to whether an event meets the definition of a "Wine and Food Exposition."

Assuming that this event would qualify as a "Wine and Food Exposition" and each winery obtained a permit, limited winery representatives 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. If your lobby area is part of the licensed premises, the limited wineries would not be able to sell their products there unless you de-license 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 promotional restrictions, please be advised that Pennsylvania law generally allows the advertising of both the price and the availability of alcoholic beverages, subject to the restrictions set forth in section 498 of the Liquor Code. [47 P.S. Section 4-498(a), (g)]. "Advertisement" means any advertising of alcoholic beverages through the means of radio broadcast, television broadcast, newspapers, periodicals, or any other publications, outdoor advertisement, any form of electronic transmission (i.e., Internet), or any other printed or graphic matter including booklets, flyers or cards, or on the product label or attachment itself. [47 P.S. Section 4-498(g)]. [Board Advisory Notice No. 15 \(4th Revision\)](#) summarizes provisions of the Liquor Code relative to the advertising of alcoholic beverages.

Be advised that section 498(b) of the Liquor Code prohibits any false, deceptive or misleading statements in price advertisements,

disparaging statements of the products of a competitor, or statements referring to monetary comparisons between brands. The prices that are advertised or displayed on the licensed premises shall be those that are in effect at the time of the advertisement or display. [47 P.S. Section 4-498(b)(1)-(3), (c)].

Please note that the entity responsible for the advertisement shall be clearly identified in the advertisement. No print advertisement of alcoholic beverages is permitted within three hundred (300) feet of any church, school or public playground, although this prohibition does not preclude any point-of-sale advertisement, menus or other print advertisement regarding alcoholic beverages if such advertisements are inside the licensed premises. The advertisement of alcoholic beverages may not contain language or slogans directed to minors to promote the consumption of alcoholic beverages. Advertisements of alcoholic beverages cannot be inconsistent with the spirit of safety or safe driving programs. [47 P.S. Section 4-498(e)(1)-(6), (f)].

No obscene advertisement is permitted. Further, no advertisement is permitted, either directly or indirectly, in a booklet, program book, yearbook, magazine, newspaper, periodical, brochure, circular or similar publication published by, for or on behalf of any educational institution, although you may wish to consult the decision in Pitt News v. Pappert, 379 F.3d 96 (3d Cir. 2004), for its application to section 498(e)(5) of the Liquor Code.

Further, section 498(e)(2) of the Liquor Code prohibits the distribution by mail of price lists, circulars or handbills to the general public, as a means of advertising liquor, wine or malt or brewed beverages. [47 P.S. Section 4-498(e)(2), Board Advisory Notice No. 15]. While the Liquor Code does not define the terms "circular" or "mailing," Webster's II New College Dictionary (1999) defines "circular" as a "printed advertisement, directive or notice for mass distribution," and "mailing" is defined as "a batch of mail sent at one time by a mailer." For purposes of clarity and uniformity, the Board has generally defined the terms "circular," "price list" and "handbill" to mean any form of "unsolicited" advertising. The Pennsylvania Attorney General's Office has determined, however, that this prohibition does not prevent a licensee from advertising the same in a newspaper or community newspaper.

However, it would be permissible for a licensee to send mailings or circulars to a distinct group of individuals of legal drinking age, who have specifically requested to receive such mailings. If a licensee intends to send unsolicited advertisements as separate circulars or mailings, please note that such forms of advertising must exclude price and availability of alcohol products.

In sum, you would be permitted to conduct a wine tasting in your lobby provided that you follow the restrictions set forth above. However, you would not be permitted to sell bottles of wine to patrons for off-premises consumption. Likewise, the limited wineries conducting the tasting could not sell wine unless an "Alcoholic Cider, Wine and Food Exposition Permit" was procured. Finally, you would be permitted to advertise your tasting event provided that such advertisement does not violate the restrictions set forth above.

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
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LCB Advisory Opinion No. 14-432