

December 2, 2014

Andrew D. Santana
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Blue Bell, PA 19422-3001

RE: Food and Wine Festival

Dear Mr. Santana:

ISSUE: This correspondence is in response to your e-mail of October 24, 2014, wherein you request an advisory opinion, on behalf of your clients, Chester Downs and Marina, LLC, trading as Harrah's Chester Casino & Racetrack ("Licensee"), regarding the legality of a proposed event, as described below.

According to the description you provided, Licensee intends to host a food and wine festival on the licensed premises. A marketing and promotions company ("Promoter") will organize the event, which will feature food and wine products of numerous vendors and wineries. Interested businesses will purchase the right to participate in the festival and may also purchase sponsorship rights including, e.g. the right to display banners at the licensed premises before and during the festival, as well as brand identification in advertising material (radio, television, online, print, billboards, etc.). All payments from participating businesses will be made directly to Promoter.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Chester Downs and Marina, LLC, holds Restaurant Liquor License No. R-21484 (LID 56931) for use at the premises located at 777 Harrahs Boulevard, Chester, Pennsylvania.

OPINION: In general, the Board's Regulations prohibit a licensee of one class, such as a manufacturer, from providing anything of value to a licensee of another class, such as a restaurant liquor licensee. Specifically, subsection 13.51(a) provides:

Except as provided herein and in § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or

indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees of a different class, 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(a)]. Similarly, the Liquor Code provisions on interlocking business practices prohibit manufacturers from providing money or other things of value to equip or otherwise help the operation of the licensed business of a retail licensee. [47 P.S. § 4-443].

However, this office historically has approved cooperative advertising between beer manufacturers or distributors and retail licensees so long as each party pays its proportional, fair-market-value share for the cost of the advertisement. Therefore, a beer manufacturer or distributor may pay a retail licensee its proportionate share for the cost of placing its name or logo in a print advertisement.

In your proposed arrangement, since it appears that Promoter, which is assumed to be a bona fide unlicensed third party based on your description, will receive all participation and sponsorship payments, the above provisions are not implicated. Please note, however, to the extent that any payments or other things of value are exchanged, at a price other than fair market value, between licensees of a different class, it would be at the discretion of the Pennsylvania State Police, Bureau of Liquor Control Enforcement, the agency tasked with enforcing the Liquor Code, to investigate and issue a citation for any violations found. You may also wish to contact the Alcohol and Tobacco Tax and Trade Bureau regarding any federal laws applicable to your proposed endeavor.

Please also note that the total cost of all point-of-sale (“POS”) advertising material relating to any one brand of any one manufacturer at any one time may not exceed three hundred dollars (\$300.00) on a retail licensed premises. [47 P.S. § 4-493(20)(i)]. However, the Pennsylvania Race Horse Development and Gaming Act exempts slot machine licensees from the cost and total display area limitations of subsection 493(20)(i) of the Liquor Code. [4 Pa.C.S.A. § 1521(c)].

Additionally, since it is not clear from your summary whether Promoter intends to sell tickets to the event or whether participating industry members will offer product tastings, please be advised that generally the sale of alcohol is unlawful in

Pennsylvania without a license or permit from the Board. [47 P.S. § 4-491(1)]. A “sale” includes any transfer of alcohol for a consideration, such as an admission fee. [47 P.S. § 1-102]. If the event will be free of charge, however, it could be conducted as a tasting, in accordance with the Board’s Regulations.

A “tasting” or “tasting event” is defined 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 § 13.201]. Tastings may be held on licensed or unlicensed premises and may be conducted by sponsors, such as 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 §§ 13.201, 13.211(a)]. When conducted by sponsors, tastings are subject to the following additional restrictions:

- (1) Products used shall be legally procured and properly registered and taxes on the products shall be paid.
- (2) Purchase requirements may not be associated with the tasting.
- (3) Products offered will not exceed a standard size alcoholic beverage for that product. For example, if wine is offered, each glass of each wine offered to a participant will not exceed 4 ounces in volume. A tasting event comparing a brand of Chardonnay from California to a brand of Chardonnay from France would allow the participant to receive one 4-ounce glass of each Chardonnay.

[40 Pa. Code § 13.211(b)].

Therefore, if Promoter intends to sell tickets to the proposed wine festival, it would be permissible only if the tickets and advertising made clear that the charge is for admission to the event and any non-alcoholic drinks, food, and entertainment. If anyone were to request free admission purely for the purpose of tasting the available wines, the individual must be admitted free of charge. In addition, any wine products used in a sampling must be legally procured. Only the Board, a sacramental wine licensee, an importer licensee, or the holder of a direct shipper license may import wine into the commonwealth. [47 P.S. § 4-491(11)].

Finally, in the event that your proposed wine festival meets the definition of an “alcoholic cider, wine and food exposition” provided in subsection 505.2(4) of the Liquor Code [47 P.S. § 505.2(4)], any licensed limited wineries participating in

your festival would be able to apply for wine exposition permits. These permits allow limited wineries to sell wine by the glass, bottle, or case at the event and to sell or give away samples of up to one (1) ounce. [47 P.S. § 5-505.2(4)].

Please do not hesitate to contact this office again, should you have any further questions.

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. 14-607