

February 23, 2015

Michael Mottern

VIA E-MAIL: [faxonbowling@aol.com](mailto:faxonbowling@aol.com)

**RE: Wine League**

Dear Mr. Mottern:

ISSUE: This office is in receipt of your e-mail dated January 27, 2015, in which you describe a proposed “wine league” to be conducted at your licensed premises. You ask whether your proposed program, as follows, is permissible. Each week for eight (8) weeks, doubles bowling teams will meet at Faxon Lanes and bowl two (2) games. During each such occurrence, each bowler will be given a food item and a choice of red or white wine. The cost per bowler will be fifteen dollars (\$15.00) per week: seven dollars (\$7.00) for the bowling, four dollars (\$4.00) for a five ounce (5 oz.) serving of wine, free food items, and a four dollar (\$4.00) gift certificate. You do not explain where this gift certificate would be redeemable.

At the end of the league schedule, participating wineries will have a tasting in your bar for the league bowlers. Each bowler will be given a twenty-four dollar (\$24.00) gift certificate to the winery of his/her choice. It is presumed for purposes of this response that this twenty-four dollar (\$24.00) gift certificate is in addition to the weekly four dollar (\$4.00) gift certificates mentioned above.

You also describe hosting wine tastings, either involving several wineries at once, or one (1) winery at a time. You note that these tastings would be done in conjunction with other events going on in the building or in the parking lot such as a bowling tournament, a fundraiser, or a fair with vendors in the parking lot. Alternatively, you may hold these tastings just for an allotted time on a given night. All tastings would be done in the bar.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Faxon Entertainment LLC is the holder of Restaurant Liquor License No. R-2238 (LID 69512) for use at the premises located at 1225 River Avenue, Williamsport, Pennsylvania. This licensee also operates a bowling center under the same roof as the licensed restaurant.

OPINION: There are multiple issues with each of your proposed events. As you are undertaking a commercial enterprise in a regulated business, you are advised to consult with private counsel experienced in Pennsylvania liquor law to provide you with specific legal guidance.

First, the holder of a restaurant liquor license located immediately adjacent to and under the same roof of a bowling center may allow persons to transport liquor or malt or brewed beverages from the licensed portion of the premises to the unlicensed portion of the premises, so long as the liquor or malt or brewed beverages remain within the bowling center. [47 P.S. §§ 4-406(a)(1), 4-442(e)(4)].

Assuming that the wine will be provided by the restaurant, it appears that “wine league” participants would pay four dollars (\$4.00) for each five ounce (5 oz.) glass of red or white wine. This cost is being packaged with free food and a gift certificate, along with the bowling itself. It is unclear whether your regular price to all customers for all red and white wine is four dollars (\$4.00) for each five ounce (5 oz.) glass. If not, then please note that retail licensees such as restaurants may have only two (2) discount promotions per day: a daily drink special and a happy hour. [40 Pa. Code § 13.102].

Regarding a daily drink special, you are permitted to offer one (1) specific type of alcoholic beverage at a discounted price all day, or for a portion of the day. [40 Pa. Code § 13.102(b)(2)]. A specific type of alcoholic beverage means either a specific registered brand of malt or brewed beverages, a type of wine, a type of distilled spirits or a mixed drink. [Id.]. For example, daily wine drink specials could be “Chardonnay” or “Merlot,” but not “all white wine” or “all red wine” or “all Kendall wines.” It also does not mean that each customer may choose which alcohol is desired to be obtained at a daily discount rate. See Board Advisory Notice No. 16 (attached hereto) for further detail. You do not indicate the times that the “wine league” would operate. A daily drink special must end by midnight; there can be no discounting of alcoholic beverages between midnight and 2:00 a.m. [Id.].

Regarding happy hours, you are permitted to discount any or all alcoholic beverages for a period of time not to exceed four (4) consecutive hours or nonconsecutive hours per day and a maximum fourteen (14) hours per week. [47 P.S. 4-406(g)]. During this time, the price of alcoholic beverages may not change. Further, the happy hour cannot extend beyond 12:00 midnight. [40 Pa. Code § 13.102(a)].

You may make an argument that, by offering all your customers the same choice of red or white wine for four dollars (\$4.00) for each five ounce (5 oz.) glass during the time

that the “wine league” is operating, you are observing a happy hour pricing scheme. However, there are other issues with your proposal. For example, alcohol may only be discounted as part of a food package if it is done in conformity with a discount pricing promotion as discussed above. Unless you normally give free food items to your bowling customers, or unless you offer the same amount of wine at the same price for those not participating in the wine league, your package as proposed is unlawful in that it violates the Liquor Code provision that prohibits giving something of value to induce the purchase of alcoholic beverages. [47 P.S. § 4-493(24)(i)].

Alternatively, section 13.53 of the Board’s Regulations allows a retail licensee to offer one (1) free standard-sized alcoholic beverage per patron in any offering, as long as the giving of the free drink is not contingent upon the purchase of any other alcoholic beverage. [40 Pa. Code § 13.53]. A standard-sized alcoholic beverage is twelve (12) fluid ounces of malt or brewed beverage, four (4) fluid ounces of wine (including fortified wine), and one and one half (1.5) fluid ounces of liquor. [Id.].

Therefore, if the fee for participation in the “wine league” consists of defined payment for the bowling, defined payment for the food item, and defined payment for the gift certificate, then it would be permissible to provide a free drink to each such “wine league” participant, so long as the single drink consists of no more than the above-enumerated standard size. Note that five ounces (5 oz.) is too large of a serving under this option.

As for the wine tasting for league bowlers to be held at the end of the league schedule, you do not indicate if there is any further cost to league members. For purposes of this response it will be assumed that there is no further cost to league members. You imply that several wineries will participate in a wine tasting to be held in your bar area (the licensed premises), but you do not indicate which entity is providing the noted twenty-four dollar (\$24.00) gift certificates.

Section 493(24)(i) of the Liquor Code provides, in pertinent part, that it shall be unlawful for:

any licensee under the provisions of this article, or the board or any manufacturer, or any employee or agent of a manufacturer, licensee or of the board . . . to offer or give or solicit or receive anything of value as a premium or present to induce directly the purchase of liquor or malt or brewed beverage, or for any licensee, manufacturer or other person to offer or give to trade or consumer buyers any prize, premium, gift or other

inducement to purchase liquor or malt or brewed beverages, except advertising novelties of nominal value which the board shall define.

[47 P.S. § 493(24)(i)]. Thus, neither your licensed restaurant nor participating wineries may give “wine league” members twenty-four dollar (\$24.00) gift certificates to the wineries as part of the benefit of participating in the wine league, if participating in the wine league requires a purchase of alcohol.

In regard to the proposed wine tasting, please note that 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 § 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 § 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 § 13.201].

Tastings are subject to the following restrictions: (1) the products used must be legally procured, properly registered, and taxes paid [40 Pa. Code § 13.211(b)(1)]; (2) there can be no purchase requirement associated with the tasting [40 Pa. Code § 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 § 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 such a tasting must be able to request and receive a free tasting of wine, even if they are not a member of the “wine league,” if the wine to be tasted is being provided directly by the limited wineries.

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. § 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. § 5-505.2(a)(4)]. The Board’s Bureau of Licensing is charged with determining the applicability of this type of permit and making a recommendation to the three (3)-member Board. It is not guaranteed that the scenario you propose would qualify.

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. 15-051

Enclosure: Advisory Notice No. 16 (Amended)