

February 19, 2015

Cindy Ertner

RE: Ordering Wine

Dear Ms. Ertner:

ISSUE: This office is in receipt of your e-mail dated January 16, 2015, wherein you indicate that you work for Llanerch Country Club, which holds a catering club license. You state that the club is interested in hosting a wine dinner. You do not explain what you mean by “wine dinner.” It is assumed for purposes of this response that you mean a dinner at which your club members could sample various wines. You ask if club members who attend the wine dinner would be permitted to order wine from the wine representative who will be present.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Llanerch Country Club holds Catering Club License No. CC-165 (LID 2858) for use by it at premises located at 950 West Chester Pike, Havertown, 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. [47 P.S. § 4-491(2)]. Such sales must generally occur at the licensee’s licensed premises. Further, please be aware that the Liquor Code provides that no club licensee may sell any liquor, wine, or malt or brewed beverages for consumption off the licensed premises. [47 P.S. §§ 4-401(a), 4-407(a)]. Therefore, neither the club nor a wine representative would be permitted to sell bottles of wine for off premises consumption to your members who attend the wine dinner, except as set forth later in this opinion.

However, the wine representative would be permitted to conduct a “tasting” during the dinner provided that the following conditions are met. 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].

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 § 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 a sponsor-led tasting must be able to request and receive a tasting of wine provided that the individual is over twenty-one (21) and not visibly intoxicated.

Additionally, be advised that if limited wineries participate in the tasting event, they would not be permitted to sell their products at your dinner 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)].

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 your wine dinner would qualify as a "Wine and Food Exposition" and the limited winery obtained a permit, the limited winery representative 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 the area where you intend to hold the wine dinner is part of the licensed premises, the limited winery would not be able to sell its products there unless you de-license that portion of the premises. For additional information on this process, you may wish to contact Licensing at (717) 783-8250.

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

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