

June 11, 2015

George Szwabiuk, Esq.
VIA E-MAIL: szwabiuk@verizon.net

RE: Club Wine Purchases and Slot Machine Installation

Dear Mr. Szwabiuk :

ISSUE: This is in response to your e-mail of May 18, 2015 wherein you inquire if the Ukrainian League of Philadelphia (“ULP”) is able to purchase wine by mail order or online for resale by the drink, citing as an example, www.laithwaiteswines.com, and if slot machines may be purchased and installed on premises with winnings in the form of tokens redeemable for food, alcohol, and/or cash. You request that relevant citations be provided.

Pennsylvania Liquor Control Board (“Board”) records indicate that Ukrainian League of Philadelphia Inc. holds Club Liquor License No. C-1320 (LID 899) for the premises at 800 North 23rd Street, Philadelphia, Pennsylvania.

OPINION: In response to your first question regarding the club’s purchase of wine, please note that it is unlawful for anyone in Pennsylvania to possess wine not acquired from a Pennsylvania wine and spirits store, a sacramental wine dealer, or a licensed limited winery. [47 P.S. §§ 4-488, 4-491(2), 5-505.2, 5-505.4]. Under the Liquor Code, limited wineries are afforded the statutory ability to operate as a direct retailer of wine to consumers. [47 P.S. § 5-505.2]. As a result of court rulings, any in-state limited winery or out-of-state entity that applies for and obtains a limited winery license from the Board may ship wine directly to Pennsylvania residents or businesses who have placed orders to such entities via telephone or the Internet. Holders of such licenses may sell alcoholic ciders, wines, and wine coolers directly to individuals and to brewery, hotel, restaurant, club, and public service liquor licensees as well as Pennsylvania winery licensees. [47 P.S. § 5-505.2]. Accordingly, wine purchased/sold by your licensed club may only come from one (1) of two (2) sources: the Board or licensed limited wineries. There is no specific method of placing the order for its purchase.

Additionally, please be advised that wines not listed for regular sale through the Board’s wine and spirits stores may be acquired by licensees of the Board via special

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liquor order (“SLO”). [47 P.S. § 3-305]. SLOs may be placed at any of the Board’s wine and spirits stores, or via the Board’s Bureau of Product Selection. SLOs must be shipped to a wine and spirits store operated by the Board and may be used, if purchased by a Board licensee, for resale in any licensed establishment.

Concerning your second question as to the installment of slot machines, please be advised that slot machines which contain a knock-down device and a counter have been considered as gambling devices *per se*, and their mere presence on the licensed premises constitutes a violation of the Liquor Code and Crimes Code which could result in a citation against the licensee. [47 P.S. § 4-471; 18 Pa. C.S.A. § 5513]. A licensee will be held strictly liable for unlawful gambling on the licensed premises. [40 Pa. Code § 5.32(f)(2)]. Generally speaking, unlawful gambling occurs when the following three (3) elements are present: a consideration or fee to play, an element of chance, and a reward or prize. Pennsylvania Liquor Control Bd. v. PPC Circus Bar, Inc., 96 Pa. Cmwlth. 115, 506 A.2d 521 (1986).

Because unlawful gambling is a violation of the Pennsylvania Crimes Code, this office cannot provide you with a legal opinion as to whether your anticipated installation and use of slot machines would constitute unlawful gambling. You should contact the local police, the Pennsylvania State Police, or the District Attorney’s Office of your county for an official opinion.

Please note that although the Board's Regulations allow certain retail licensees such as club licensees to conduct self-sponsored events, tournaments, or contests and to award prizes, there may be no unlawful gambling directly or indirectly associated with the event, tournament, or contest. In addition, the value of all prizes awarded may not exceed one thousand dollars (\$1,000.00). The maximum weekly prize limit in a seven (7)-day period is twenty-five thousand dollars (\$25,000.00). [40 Pa. Code § 5.32(f)(7)]. These limits are not only applicable to cash prizes, but include the fair market value of any non-cash prizes. Additionally, there are exceptions to prize limitations for entities operating under the Local Option Small Games of Chance Act (“LOSGCA”). [10 P.S. §§ 311-327].

Please note that the Board does not regulate the LOSGCA and as such, the interpretation of this act falls outside of the Board’s authority. Therefore, if you choose to pursue such an option, it is recommended that you contact your County Treasurer’s Office and/or the Pennsylvania Department of Revenue, Miscellaneous Tax Division at (717) 787-8275 with any questions. You may also wish to contact the Pennsylvania State Police, Bureau of Liquor Control Enforcement (the entity charged

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with the responsibility of enforcing the LOSGCA at licensed establishments) at 717-540-7428.

Although this office is unable to address the use and installation of the slot machines, it should be noted that if it is deemed lawful, the giving of alcohol or tokens redeemable for alcohol, including tokens redeemable for a prize, is not lawful. Pursuant to section 493(24) of the Liquor Code [47 P.S. § 4-493(24)], Board Advisory Notice No. 10 (6th Revision), and section 5.32(h) of the Board's Regulations [40 Pa. Code § 5.32(h)], alcoholic beverages may not be included as part of a prize.

Lastly, please be advised that a club licensee is required to adhere to its constitution and bylaws. [40 Pa. Code § 5.81].

Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once again 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, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 15-247