

October 2, 2015

Dan Brown

VIA E-MAIL: dan@deerfootfarm.com

RE: Tasting Situations at Farmers' Market

Dear Mr. Brown:

ISSUE: This is in response to your e-mail dated September 3, 2015, wherein you state that your licensed limited winery has a farmers' market stand. Recently you encountered two (2) situations for which you seek legal guidance for future handling. First, a couple came to your farmers' market stand for a tasting and the man was carrying a firearm on his belt. Although he did not request a tasting, you inquire whether you are permitted to deny him service because of the firearm. Second, a man was riding around the farmers' market on a reclining bicycle, visiting stands but not getting off the bicycle. This man did not ask for a tasting at your stand; however, you ask whether you would be permitted to serve him if he did not get off the bicycle.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Deerfoot Vineyards and Winery LLC holds for Limited Winery License No. LK-451 (LID 71050) for use at the premises located at 1492 Ridge Road, Shoemakersville, Pennsylvania. This establishment also holds a valid farmers' market permit. You are the Board-approved manager of this establishment.

OPINION: In response to your first question, as long as a patron is lawfully in possession of the firearm, nothing in the Liquor Code or the Board's Regulations would prohibit a patron from carrying a firearm onto the licensed premises (here, the farmers' market stand). Such a patron, assuming legal age and no visible intoxication, could be served wine tastings in the same manner as other patrons not carrying firearms. However, licensees, generally, may enforce their own rules with regard to prohibiting entrance into licensed premises and/or service of alcohol, provided that such conditions or such rules are non-discriminatory or are not in place for some other unlawful purpose. As such, there is nothing in the Liquor Code or Board Regulations that requires licensees to admit into their licensed premises or to serve alcohol to patrons that are legally carrying firearms.

In response to your second question, while neither the Liquor Code nor the Board's Regulations specifically permit or prohibit "drive-up" wine tastings at a permitted farmers' market stand, the Commonwealth Court's decision in Pennsylvania Liquor Control Board v. Burrell Food Systems, Inc., 508 A.2d 1308 (Pa. Cmwlth. 1986), affirmed the Board's policy

of refusing drive-through sales of alcohol. However, the reason for refusing drive-through sales, in nearly all cases, was that the actual sale of the alcohol would be taking place off the licensed part of the premises, an act which is clearly prohibited by the laws previously discussed above. In those cases, if a drive-through area was contained entirely within the licensed premises, then sales of malt or brewed beverages from that area were found to be permissible.

Applying this to your scenario, a limited winery is permitted to provide tastings and also to sell its products at farmers' markets pursuant to a valid permit issued for this purpose. More specifically, a limited winery may apply for a "farmers market permit" for the sale of its product at more than one (1) farmers market at any given time. [47 P.S. § 5-505.2(c)].

There is no prohibition in the Liquor Code or the Board's Regulations against selling or serving individuals on bicycles. Any concerns that you may have regarding DUI and/or Dram Shop liability should be addressed to your county district attorney and/or your private counsel.

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- 429