February 1, 2016

Judd Goodman
VIA E-MAIL

RE: Wine-to-Go

Dear Mr. Goodman:

ISSUE: This office is in receipt of your e-mail dated December 16, 2015, wherein you explain that your restaurant has wine on tap, which you would like to serve to your customers in a sealed decanter so that they may take the remaining wine home with them after they have finished their meals. You indicate that you understand that section 406(e)(1) of the Liquor Code provides that customers who have purchased, but only partially consumed, a bottle of wine on the premises, may remove the bottle from the premises, so long as the bottle was purchased in conjunction with a meal. You note that section 406(e)(1) does not reference other types of containers and ask if the term "bottle" includes sealed decanters, which you would fill from your wine tap. Additionally, you ask whether there is a specific size of container or bottle of wine that a customer may remove from the premises, which was purchased in conjunction with a meal.

Pennsylvania Liquor Control Board ("Board") records indicate that Brubar, Inc. holds Restaurant Liquor License No. R-15865 (LID 48415) for use by it at premises located at 228-234 North 2nd Street, Harrisburg, Pennsylvania.

OPINION: As you are aware, the sale of wine for off-premises consumption is generally prohibited. Section 406(e)(1) of the Liquor Code provides a limited exception that:

> the holder of a hotel license or a restaurant license may allow persons who have purchased, but only partially consumed, a bottle of wine on the premises to remove the bottle from the premises, so long as the bottle was purchased in conjunction with a meal which was consumed on the premises and so long as the bottle is resealed.

[47 P.S. § 4-406(e)(1)]. The term "bottle of wine" is not defined in Liquor Code or the Board's Regulations. However, colloquially, the term "bottle of wine" is used to

describe wine as it is packaged by a manufacturer. Further, the intent of this section is to give a consumer who has already purchased the wine in question, the option of taking the remaining wine with him or her rather than having the consumer attempt to quickly drink all of the remaining wine prior to leaving the premises and driving home.

To expand the term "bottle of wine" to include decanters filled and sealed by retail licensees would obviate the intent of section 406(e)(1), which is to provide retail licensees with a very limited exception to the general prohibition of the sale of wine by retail licensees for off-premises consumption, because it would essentially permit retail licensees to package wine. Retail licensees are not authorized under the Liquor Code to package wine. Only manufacturers are afforded this privilege. Therefore, the only off-premises sales of wine that could be conducted by a retail licensee are partially consumed bottles as discussed above.

Please do not hesitate to contact this office should you have additional 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,

RODRIGO J. DIAZ
EXECUTIVE DEPUTY 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. 15-533