



May 5, 2016

Hoser33

VIA E-MAIL

RE: Wine and Beer Festival

Dear Sir/Madam:

ISSUE: This is in response to your e-mail dated March 11, 2016, wherein you state that your “organization has a bar with a license.” You ask what is needed for your organization to hold a wine and beer festival. You further ask what rules apply to limited wineries and breweries who wish to provide a tasting and to sell and serve alcohol at the festival. It is presumed for purposes of this response that your organization has an interest in a restaurant liquor license issued by the Pennsylvania Liquor Control Board (“PLCB”).

OPINION: What is required of your organization depends upon several factors, such as whether your organization will charge an entrance fee or sell tickets to enter the festival, whether the festival will be held on the licensed premises or an area that is not licensed, whether the entities participating in the festival wish to sell their products, and whether these entities have their own permits to sell or give away alcohol.

Because you are considering a commercial undertaking in a highly regulated industry, you are strongly encouraged to seek private counsel experienced in liquor law.

Please be advised that limited wineries participating in the festival are not permitted to sell their products at the event without first obtaining an Alcoholic Cider, Wine and Food Exposition Permit from the PLCB. 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 PLCB’s Bureau of Licensing

("Licensing") which makes the decision as to whether an event meets the definition of a "Wine and Food Exposition."

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 ounce. 47 P.S. § 5-505.2. Each permit can be used for only up to thirty consecutive days and the total number of days for all of the special permits cannot exceed one hundred days per calendar year.

Assuming that the event would qualify as a "Wine and Food Exposition" and each winery obtained a permit, limited winery representatives must be located on an unlicensed portion of your premises. Limited wineries would not be able to sell their products on your licensed premises, unless you de-license that portion of your premises. This can be accomplished by submitting a letter to Licensing that clearly specifies the area to be de-licensed, including a map of the licensed premises that denotes said area, and the dates and times that the area should be delicensed.

Please be advised that unlike wine festivals, where limited wineries are permitted to not only serve tastings of their products but can also sell their products pursuant to wine exposition permits, there is no equivalent provision in the Liquor Code regarding malt and brewed beverage manufacturers and beer festivals. However, tastings may be conducted by sponsors upon licensed or unlicensed premises so long as there is no charge to attend the festival. 40 Pa. Code § 13.211(a). Tasting or tasting events are defined in the PLCB's Regulations as presentations of alcoholic products to the public for the purpose of market research, disseminating product information and education to the public as to quality and availability. 40 Pa. Code § 13.201. Tastings may be conducted by sponsors, which are defined as "any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is 21 years of age or older."

Tastings may be conducted on licensed or unlicensed premises, and when conducted by a sponsor are subject to the following conditions: (1) any products used must be legally procured and registered, and the taxes thereon must be paid; (2) there can be no purchase requirement associated with the tasting or tasting event; and (3) no more than one standard size alcoholic beverage of each product may be provided to each tasting participant. 40 Pa. Code § 13.211(b). PLCB Regulations provide that a standard-sized alcoholic beverage is twelve fluid ounces of malt or brewed beverage, four fluid ounces of wine (including fortified wine), or one and one-half fluid ounces of spirits. 40 Pa. Code § 13.201.

Please be further advised that pursuant to section 406(f) of the Liquor Code, holders of restaurant licenses, and hotel licenses, may apply for and obtain an “off-premises catering permit,” which allows the permittee to hold a “catered function” off its licensed premises and on otherwise unlicensed premises. Sales of alcohol at such catered functions are permitted and can be by the glass, open bottle or other container, for consumption on the catered premises; however, no sales for take-out are permitted. 47 P.S. § 4-406(f). A “catered function” is defined as “the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance.” 47 P.S. §1-102.

If your organization intends to charge an entrance fee or sell tickets to enter the festival, another option, though remote, may be for your organization to obtain a special occasion permit (“SOP”). An SOP is a temporary permit that allows the holder to sell alcohol as a means of raising funds for its organization. 47 P.S. § 4-408.4(m). However, only certain “eligible entities,” as defined in section 102 of the Liquor Code, 47 P.S. § 1-102, may apply for and obtain an SOP, which authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises on any day for which the SOP is issued. 47 P.S. § 4-408.4(k).

A determination as to whether a particular organization qualifies for an SOP is made by Licensing upon receipt of an application for an SOP. In order to view a list of the entities which are eligible to obtain an SOP, please visit the PLCB’s website at www.lcb.state.pa.us, and select “PA Liquor Code” under the heading “Legal.” Then, under “Title 47 P.S. Liquor,” select “Chapter 1. Liquor Code,” followed by “Article I. Preliminary Provisions.” From that point, select “§ 1-102 Definitions,” and then scroll down until you find the term “Eligible Entity.”

An SOP is a temporary permit that is to be used as a means of raising funds for the holder, but can be used in conjunction with activities or events involving other entities. 47 P.S. § 4-408.4(m). An SOP generally cannot be obtained for premises already licensed by the PLCB because the PLCB will not dual license a location absent specific statutory authority; however, if the premises which is currently licensed is de-licensed for the day or days of the event, an SOP could be used at such premises.

SOPs are also generally issued for a period of not more than six consecutive or nonconsecutive days during a calendar year. 47 P.S. § 4-408.4(i). The holder of an SOP may sell alcoholic beverages for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day. 47 P.S. § 4-408.4(k). The holder of an SOP is also required to give the local police department, or the Pennsylvania State Police if there is no local police department, written notice at least forty-eight hours prior to each use of the special occasion permit. 47 P.S. § 4-408.4(j).

Finally, it should be noted that licensees are strictly liable for violations of the Liquor Code and its attendant laws and regulations that occur on the licensed premises. Pennsylvania Liquor Control Board v. TLK, Inc., 544 A.2d 931 (Pa. 1988). Licensees are specifically prohibited by the Liquor Code from selling, furnishing and/or giving alcohol, and from permitting the sale, furnishing or giving of alcohol, to minors or visibly intoxicated persons. 47 P.S. § 4-493(1).

Should you have any further questions regarding this matter, the Liquor Code, or the PLCB's Regulations, please do not hesitate to 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.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director of Office of Regulatory Affairs
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