

May 24, 2016

Olivia Ponce
VIA E-MAIL

RE: Off-Premises Sale of Wine

Dear Ms. Ponce:

ISSUE: This office is in receipt of your e-mail dated April 4, 2016, wherein you indicate that you represent a client who currently holds several restaurant liquor licenses. You explain that your client is exploring the idea of selling bottles of wine to customers and employees who place a monthly order with the restaurant. You further explain that upon receiving the orders, the restaurant licensee will place an order with the vendor who will deliver the wine to the restaurant. Customers and employees will then pick up their orders at the restaurant on the designated day and time.

OPINION: Be advised that the sale of wine for off-premises consumption by retail licensees 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 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.

Your client's proposal 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. Thus, your client cannot sell wine for off-premises consumption in the manner proposed. The only

off-premises sales of wine that could be conducted by your client are partially consumed bottles as discussed above.

Nevertheless, be advised that patrons could consume the entire bottle of wine on the licensed premises. However, sale of the wine must be in accordance with the PLCB's discount pricing practices which are found in section 406(g) of the Liquor Code and section 13.102 of the PLCB's Regulations. 47 P.S. § 4-406(g); 40 Pa. Code § 13.102; see also PLCB Advisory Notice No. 16 (Amended). Further, be advised that section 493(1) of the Liquor Code prohibits licensees, or their servants, agents, or employees, from providing alcohol to someone who is visibly intoxicated. 47 P.S. § 4-493(1).

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.

Sincerely,



RODRIGO J. DIAZ
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. 16-192