

September 16, 2016

Todd Hennard  
Carnegie's Inc.  
**VIA E-MAIL**

**AMENDED**

**RE: Wine Sales**

Dear Mr. Hennard:

ISSUE: This office is in receipt of your e-mail dated June 9, 2016, wherein you pose several questions pertaining to recently passed legislation (Act 39 of 2016 ["Act 39"]) that permits you to sell wine at your establishment. Your questions will be re-stated and answered below.

Records of the Pennsylvania Liquor Control Board ("PLCB") indicate that Carnegie's Inc. holds Restaurant Liquor License No. R-13275 (LID 32054) for the premises located at 27 Congress Street, Bradford, Pennsylvania. PLCB records reflect that you are the Board-approved President.

You also currently hold Restaurant Liquor License No. R-7757 (LID 71258) for the premises located at 19 Congress Street, Bradford, Pennsylvania.

In addition, you are the holder of Transporter-for-Hire Class B License No. IB-4472 (LID 71827).

OPINION: By way of general information, as you appear to be aware, on June 8, 2016, Governor Wolf signed into law Act 39, making various changes to the Liquor Code. The changes made by Act 39 will be effective on August 8, 2016. One such change is the creation of a wine expanded permit ("WEP") for restaurant and hotel liquor licensees. This permit will allow its holders to sell wine-to-go until 11:00 p.m. Monday through Saturday, and on Sundays if the holder has a Sunday Sales Permit. A permittee may sell up to 3,000ml (3 liters) of wine in a single transaction. There is a \$2,000.00 application fee for this permit and an annual renewal fee of 2% of the cost of wine purchased from the PLCB for off-premises consumption.

Sales of wine-to-go must occur at a specifically designated area of the licensed premises, but other items may be purchased at the same location. Sales of wine-to-go must occur at a designated register which is staffed at all times by a cashier who is at least eighteen years old and is RAMP-trained. No sales of wine-to-go may occur elsewhere on the premises. A WEP holder must use a transaction scan device to verify the age of anyone who appears to be under thirty-five years old and must comply with all components of RAMP. Wine may be stored in a non-contiguous area that is not accessible to the public, is locked at all times, and is not accessible to employees under eighteen years old.

Your questions appear below, in the order in which you presented them.

*1) Are we able to start selling wine immediately?*

No. You must submit a WEP application and the \$2,000 application fee to the PLCB's Bureau of Licensing. You may not sell wine-to-go unless and until the application is approved by the PLCB, which will not occur prior to August 8, 2016, when Act 39 goes into effect.

*2) Is there a limit for number of bottles and amount/size of the bottles?*

While there is no *per se* limit on the number of bottles that may be sold, a holder of a WEP may only sell up to 3,000ml (3 liters) of wine in a single transaction.

*3) Must the wine being sold be purchased from a state store?*

No. As a restaurant liquor licensee, you are still permitted to purchase wine from licensed limited wineries or the PLCB's stores. A holder of a WEP may not sell a private label product (meaning a product made under contract by a manufacturer for the exclusive right of a retailer).

Please be further advised that a WEP holder cannot sell wine-to-go for a price that is lower than the price at which it purchased the product from the PLCB. WEP holders must pay sales tax on purchases of wine made from the PLCB at the time of purchase, just as they would for any other product purchased from the PLCB. WEP holders are also required to collect the sales tax from the consumers to whom they sell wine-to-go, and can then seek reimbursement for the sales tax which they previously paid to the PLCB.

4) *Are we able to deliver wine with a food purchase because we have a transporter-for-hire license?*

PLCB records reflect that you hold a Transporter-for-Hire Class B license, which allows you to engage in the commercial transportation of **malt or brewed beverages only** to or from points located in the Commonwealth. Therefore, in order to transport wine, you would need to apply and be approved for a Transporter-for-Hire Class A license, which allows for the commercial transportation of liquor, malt or brewed beverages, or alcohol to or from points located in the Commonwealth.

If approved for a WEP and a Transporter-for-Hire Class A license, you would then be permitted to transport wine or beer to a customer's home provided that the sale of the items is completed on your licensed premises before the delivery occurs. 47 P.S. §§ 1-102; 4-401(a); 4-492(2)-(4). ***Further, the sale of wine-to-go must be executed in compliance with Act 39. This means that the sale must occur at a register that is designated for said sales and is located on the licensed premises. The sale must be conducted by a sales clerk that is at least eighteen years of age, and has undergone seller/server training as required by section 471.1 of the Liquor Code. The customer's identification card, if the customer appears to be under thirty-five years of age, must be scanned by a transaction scan device for each sales transaction involving wine; this requires the purchaser to be present at the licensed premises when the sale of wine is consummated. Finally,*** it would not be permissible for a customer to pay the delivery person for the alcohol, as that would clearly be a sale occurring off of the licensed premises, which is not permitted.

5) *How does a person apply to sell beer and wine at a convenience store or grocery store? Are there any qualifying requirements for that?*

There is no license exclusively for convenience and grocery stores. The convenience and grocery stores that sell alcohol have been approved by the PLCB's three-member Board for either a restaurant liquor ("R") license, as you have, or an eating place retail dispenser ("E") license. The qualifying requirements are the same for all applicants for R and E licenses (i.e., food, seating, square footage), as are the operational requirements and limitations found in the Liquor Code and the PLCB's Regulations.

Grocery stores and convenience stores applying for an R or E license must also obtain approval from the three-member Board to have an interior connection to another business (namely, the grocery/convenience store). Such interior connections

Todd Hennard  
September 16, 2016  
Page 4

are subject to additional requirements and restrictions found within the Liquor Code and the PLCB's Regulations. 40 Pa. Code §§ 3.53, 3.54; 47 P.S. § 4-468(e).

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,

A handwritten signature in cursive script, appearing to read "Rodrigo J. Diaz".

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. 16-267