

November 20, 1998

Barry Goldstein, Esquire

GOLDSTEIN FRIEDERG & GOLDSTEIN

230 South Broad Street

17th Floor

Philadelphia, PA 19102

Dear Mr. Goldstein:

ISSUE: This office is in receipt of your October 28, 1998 facsimile transmittal in which you inquire whether it would be permissible for an individual officer of a corporate licensee to transfer ownership of a personal collection of fine wines to the corporate licensee or whether he could place the wines on the licensed premises for sale in sealed bottles.

OPINION: Your letter does not specify whether transfer of the collection involves the sale of the same to the licensee. It is the Board's position that licensees may not purchase wine from individuals who liquidate personal wine cellars in the Commonwealth of Pennsylvania. In fact, section 491(2) of the Liquor Code prohibits any person from possessing or transporting wine within Pennsylvania, unless it has been purchased from the Board's Wine & Spirits Shoppes or from a licensed limited winery. [47 P.S. Section 4-491(2)]. Only the Pennsylvania Liquor Control Board and licensed limited wineries are permitted to sell wine for off-premises consumption in Pennsylvania. There is an exception which permits an executor or administrator of a decedent's estate to sell privately or by public auction liquor which was an asset of the decedent. [47 P.S. Section 4-491(1)]. Unless the wine cellar is part of a decedent's estate, licensees would not be permitted to purchase the wine from an individual in Pennsylvania. Assuming, however, the wines in the collection were originally purchased from a Wine & Spirits Shoppe within the Commonwealth, the officer would be permitted to simply give the collection to the licensee.

With regard to what the licensee is permitted to do with the collection once obtained, be advised that section 406(a)(1) of the Liquor Code provides that restaurant licensees 'may sell liquor ... by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the ... restaurant habitually used for the serving of food to guests or patrons...' [47 P.S. Section 4-406(a)(1)]. Thus, even if your client was able to legally obtain the wine from the individual officer, the licensee would not be permitted to sell it in sealed bottles for consumption off of the licensed premises. It would, likewise, be impermissible for the individual officer of the corporate licensee to sell the wine from his collection on the licensed premises, even if it was for on-premise consumption, because he does not individually hold a liquor license allowing him to sell liquor within the Commonwealth of Pennsylvania. Further, section 3.52(b) of the Board's Regulations prohibits licensed premises from

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having any inside passage or communication to or with any business conducted by other persons, except as approved by the Board. [40 Pa. Code Section 3.52(b)].

Please do not hesitate to contact this office if you have any further 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,

FAITH S. DIEHL

CHIEF COUNSEL

cc: Pennsylvania State Police-

Bureau of Liquor Control Enforcement

Refer to: (717) 783-9454

FAX: (717) 787-8820

LCB Advisory Opinion No. 98-377