

December 4, 1998

Bart Pio

Bartolomeo Pio, Inc.

260 New York Drive

Fort Washington, PA 19034

Dear Mr. Pio:

ISSUE: In your letter dated October 19, 1998, you inquired on behalf of E. & J. Gallo Winery as to the legality of shipping two cases of table wine to distributors for delivery to non-licensees for gift purposes when 1) Federal approval has been obtained, but state registration or brand approval is pending or 2) when all necessary approvals have been obtained, but the wine is not currently in the distributor's inventory. Alternatively, Gallo also questioned whether it would be permissible to send the wine to distributors as a 'no charge' shipment if properly invoiced to distributors and all taxes paid.

OPINION: According to Board Advisory Notice No. 10 (4th Revision), wine manufacturers, vendors and vendors' agents may provide samples to licensees and non-licensees subject to the conditions set forth in Chapter 13, Subchapter B of the Board's regulations. Specifically, section 13.81 permits each registered agent of a licensed vendor to use one case of each brand of liquor as samples each calendar month. These samples must be purchased from the Board at a price which constitutes the Board's cost, plus 25% and any required taxes. Samples may not be purchased at retail at the Board's Wine & Spirits Shoppes. Instead, a separate order for samples must be placed either by the vendor or the vendor's agent. Samples of wine are restricted to half bottles or less unless the Board approves another size. Each sample bottle must have a specific sample label affixed to it before it leaves the Board's possession. Further, each licensed vendor is required to keep certain records regarding samples. [40 Pa. Code Section 13.81].

Another way in which distributors can distribute product is through the Special Liquor Order ('SLO') process. [See 40 Pa. Code Section 13.71 et seq.]. SLOs can be placed by contacting the Administrative Management Support Section of the Board's Bureau of Logistics at (717) 783-8237.

Regarding your first question, no product can be distributed as samples or through the SLO process unless Federal approval has been obtained. Therefore, while nothing prohibits the shipment of product to the distributor without Federal approval, the distributor would not be able to distribute such product in Pennsylvania without having it first pass through the Board in some manner, e.g., as samples or as a SLO item. The Board will not accept any product for distribution that does not have the necessary Federal or state approvals.

With respect to your second question, product could be shipped to the distributor from Gallo as previously discussed and since all necessary approvals have been obtained, the product could now be processed through the Board as either a sample or a SLO whereby the product is sold by the Board back to the distributor. The distributor would then be able to distribute the product to non-licensees for gift purposes.

With regard to Gallo's alternative proposal, nothing in the Board's regulations or the Liquor Code would prohibit Gallo from shipping wine to its distributor as a ('no charge') shipment.

Also, please be advised that there is a procedure whereby product may be imported by vendors or vendors' agents for donation purposes to nonprofit entities. If this is something you or Gallo may be interested in, again please contact the Administrative Management Support Section for additional information. In addition, I have enclosed a copy of section 13.81 for your information.

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: Bureau of Liquor Control Enforcement,

Pennsylvania State Police

Joy Taljan

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Advisory Opinion No. 98-391