

April 15, 1999

Richard G. Wimer, Jr.
The Village Inn Restaurant
R. D. #1 Box 316
New Castle, PA 16101

Dear Mr. Wimer:

ISSUE: In your letter dated March 8, 1999, you, the holder of an eating place retail dispenser license, inquired whether your patrons may bring their own wine onto your licensed premises. In addition, you inquired whether your cooking staff may keep white wine and sherry in the kitchen for cooking purposes only.

OPINION: Section 492(13) of the Liquor Code prohibits eating place retail dispenser licensees from possessing or permitting the storage of any alcohol or liquor on the licensed premises or in any place contiguous or adjacent thereto accessible to the public or used in connection with the operation of the licensed premises. [47 P.S. Section 4-492(13)]. With respect to storing white wine and sherry in your kitchen, you cannot store or possess white wine and sherry anywhere in your establishment if the white wine or sherry is drinkable. However, if the wine or sherry is not drinkable (i.e., the salt content of the wine or sherry renders it unfit for drinking purposes), then such wine or sherry could be stored on the licensed premises for cooking purposes only.

Regarding your first question, the liquor laws do not specifically prohibit customers bringing their own wine onto your licensed premises. However, municipalities have the right to enact ordinances prohibiting such conduct and therefore, you may want to contact your local municipal government regarding this issue. As discussed above, you may not in anyway store or permit the storage of the customer's wine that is brought onto your premises. In other words, you should not in anyway take possession of the customer's wine for storage purposes, but rather the customer's wine should remain at the table for consumption by the customer, and any unfinished wine should be taken by the customer off the licensed premises. Furthermore, should a customer leave a licensed premises with an unfinished bottle of wine, the Pennsylvania State Police, Bureau of Liquor Control Enforcement, which is responsible for enforcement of the liquor laws in Pennsylvania, might assert that you sold the wine to the customer unless you are able to show that the wine was the property of the customer. In order to prevent such a scenario, it is suggested that you require customers who bring their own wine onto your licensed premises to have in their possession a receipt reflecting where the wine was purchased.

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

Refer to: (717) 783-9454
Fax: (717) 787-8820

Advisory Opinion No. 99- 134