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## **CONDUCTING SPECIAL EVENTS WHERE ALCOHOLIC BEVERAGES WILL BE MADE AVAILABLE TO ATTENDEES**

*Please be advised that it is the Pennsylvania State Police, Bureau of Liquor Control Enforcement (BLCE), and not the Pennsylvania Liquor Control Board (PLCB), which enforces the liquor laws in Pennsylvania. Further, information provided below is not binding on the BLCE and is offered for information and guidance only*

The PLCB is frequently contacted by organizations or groups interested in hosting festivals or similar special events at which alcoholic beverages will be made available to attendees. The following is offered as general guidance for how such festivals or events may be conducted lawfully under the Liquor Code and the PLCB's Regulations.

### ***I. Prohibition Against the Sale of Alcohol without a License or Permit***

In Pennsylvania, the sale of alcohol by anyone is prohibited, unless the seller holds a valid license or permit issued by the PLCB. 47 P.S. § 4-491(1). The Liquor Code broadly defines a "sale" as any transfer of liquor, alcohol or malt or brewed beverages for a consideration. 47 P.S. § 1-102.

There is nothing in the Liquor Code or the PLCB's Regulations that prohibits a non-licensed person or entity from giving away free alcohol, and there are no limitations as to the type or amount of alcohol that a non-licensed person or entity may give away. However, the alcohol provided must truly be free. In other words, the provision of alcohol cannot be predicated upon the purchase of a meal, an admission ticket, donation, payment of any other fee, etc.

Anyone who is twenty-one years of age or older and who is not visibly intoxicated must be able to request and receive the complimentary alcoholic beverages. Otherwise, the persons or entities providing the alcohol could be charged with selling alcohol without a license in violation of the Liquor Code. Thus, if the purchase of a meal, and admission ticket, donation, or payment of any other fee is necessary to obtain access to alcoholic beverages at your event, this would be considered a sale of alcohol and must be done pursuant to an applicable license or permit.

## *II. Options for Selling Alcohol*

There are several potential options to consider that would allow for alcohol sales to occur at your event.

### *A. Special Occasion Permit*

One option is to conduct the event pursuant to a special occasion permit (“SOP”). Section 408.4 of the Liquor Code authorizes the PLCB to issue SOPs to certain “eligible entities,” as defined in section 102 of the Liquor Code. 47 P.S. §§ 1-102, 4-408.4.

An SOP authorizes the holder thereof to sell liquor and/or malt or brewed beverages to persons of legal drinking age for consumption on or off the licensed premises during the hours of 7:00 a.m. until 2:00 a.m. of the following day on any day for which the SOP is issued. 47 P.S. § 4-408.4(k). SOPs may only be used for nine consecutive or nonconsecutive days and an additional 10 consecutive days during a calendar year. 47 P.S. § 4-408.4(i).

The purpose of an SOP is to provide the eligible entity with a means of raising funds for itself. 47 P.S. § 4-408.4(m). An SOP may be used in conjunction with activities and events involving other entities; however, no one other than the holder of the SOP may acquire a pecuniary interest therein. *Id.* This office has interpreted this to require that all proceeds from the sale of alcohol pursuant to an SOP must be collected by the holder of the SOP. However, there is nothing that would prohibit the holder of an SOP from subsequently making a voluntary contribution to, or partnering with, third parties.

To state it differently, an eligible entity may obtain an SOP, use it to acquire and sell alcohol at an event being hosted by or in conjunction with a third party, retain the proceeds from the sale of alcohol, and then subsequently make a voluntary contribution of a portion of the proceeds from the sale of alcohol to the third party. This type of partnering arrangement is often suggested by this office as an alternative to organizations that are looking to obtain an SOP, but do not qualify as an eligible entity under the Liquor Code.

Only the named holder of the SOP would be authorized to sell alcoholic beverages under the authority of the SOP. The named holder of the SOP would also be responsible for lawfully procuring any alcoholic beverages to be sold under the authority of the SOP. Additionally, the named holder of the SOP would be held responsible for any violations of the Liquor Code, including service to minors or visibly intoxicated patrons.

The holder of an SOP would also be obligated to give the local police department, or the Pennsylvania State Police if there is no local police department, written notice at least forty-eight hours prior to each use of the special occasion permit. 47 P.S. § 4-408.4(j). Written

notice consists of notifying the police of the date, time and place of the impending sale of alcoholic beverages. Id.

Further, an SOP generally cannot be obtained for premises already licensed by the PLCB because the PLCB will not dual-license a location absent specific statutory authority; however, if the premises which is currently licensed is de-licensed for the day or days of the event, an SOP could be used at such premises.

Eligible entities may apply for an SOP using the PLCB's online regulatory system, [PLCB+](#). The determination as to whether a particular organization qualifies for an SOP is made by the PLCB's Bureau of Licensing upon receipt of an application.

### ***B. Off-Premises Catering Permit***

An alternative option would be to approach a licensed entity about holding the event as a "catered function" off its licensed premises pursuant to an off-premises catering permit ("OPCP"). As its name suggests, an OPCP allows the holder thereof to conduct a "catered function" off its licensed premises and on otherwise unlicensed premises. 47 P.S. §§ 4-406(f), 4-442(f). A "catered function" is defined as "the furnishing of food prepared on the premises or brought onto the premises already prepared in conjunction with alcoholic beverages for the accommodation of a person or an identifiable group of people, not the general public, who made arrangements for the function at least thirty days in advance." 47 P.S. § 1-102. OPCPs are subject to the following limitations:

- (1) alcohol may be provided only during the days and hours that the license holder may otherwise sell alcohol;
- (2) all servers at the off premises catered function shall be in compliance with the responsible alcohol management provisions under section 471.1;
- (3) each catered function shall last no longer than one day and not more than fifty-two catered functions may be held each calendar year by each license holder for use with a particular license;
- (4) a catered function shall not be held at a location that is already subject to the applicant's or another licensee's license;
- (5) a permit shall not be issued to an applicant whose license is in safekeeping;
- (6) a permit shall not be issued to a location that is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(7) a permit shall not be issued to a location that is subject to a pending license suspension under section 471 or the one-year prohibition on the issuance or transfer of a license under section 471(b);

(8) no alcohol may be taken from the permitted location by any patron, but the applicant may transport alcohol to and from its licensed premises to the proposed premises;

(9) written notice of the catered function as enumerated in paragraph (10) shall be provided to the local police and the enforcement bureau at least seven days in advance of the event;

(10) written notice shall be provided to the board at least fourteen days prior to a catered function. Written notice must include the location of the function, time of the function, host of the function, general information regarding the guests expected at the function as well as any information the board shall from time to time prescribe. The board may, in its discretion, accept notice in an electronic format. The board may, in its discretion, waive the thirty-day notice period for a catered function if:

(i) the applicant has previously conducted functions that meet the requirements of this act;

(ii) the applicant is a licensee in good standing with the board;

(iii) notification was received at least seven days prior to the catered function; and

(iv) the applicant pays a late fee of one hundred dollars (\$100);

(11) the board shall, in its discretion, approve or disapprove a catered function if the applicant fails to provide timely notice of the catered function, does not intend to conduct a function that meets the requirements of this act or has previously conducted a function that did not meet the requirements of this act;

(12) if a catered function is scheduled to occur on private property, the owner of that property is deemed to have submitted to the jurisdiction of the enforcement bureau, and the warrant required by section 211(a)(2) of this act shall not be necessary for the enforcement bureau to enter and search the premises during the function or any activities related to the function;

(13) no catered function may be held for more than five hours per day and must end by midnight unless the catered function occurs on December 31 of any calendar year on which date the catered function must end by two o'clock antemeridian;

(14) neither the owner of the property nor the applicant may sell tickets to a catered function unless one of the following conditions is met:

(i) the applicant has contracted with an eligible entity for the function, and the function is being used to raise money for the eligible entity's organization;

(ii) the applicant has contracted with a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)), for an event which has the sole purpose of raising funds for that nonprofit organization; or

(iii) the applicant has contracted with an organization that holds tax exempt status under section 527 of the Internal Revenue Code of 1986;

(15) the catered function location shall be subject to section 493(34) of this act;

(16) catered functions may not be held in locations that are subject to a pending, protested transfer application;

(17) a permit may not be issued to a license holder whose license is subject to a pending objection by the director of the Bureau of Licensing or the board under section 470(a.1);

(18) a permit shall not be issued to a licensee for use in any location that is mobile; and

(19) a permit shall not be issued for use on any location used for parking at a sports event or concert event.

47 P.S. § 4-406(f), 4-442(f) (footnotes omitted).

Note that an OPCP would only authorize the holder of the OPCP to engage in the sale of alcohol during the event, and any alcohol sold would need to be lawfully procured in the same manner as any other alcohol that the OPCP holder uses in the regular course of its operations. It would not be permissible for your organization or any third party to sell

alcohol under the authority granted solely to the OPCP holder. Similarly, it would not be permissible for the OPCP holder to sell donated alcohol. However, there is nothing that would prohibit an OPCP holder from donating the proceeds generated from the sale of alcohol during a fundraising event to third parties after the event.

### *C. Catered Event*

Another alternative option would be to approach a licensed entity about holding the event as a “catered event” at its licensed premises. Section 13.102 of the PLCB’s Regulations prohibits the sale and/or service of an unlimited or indefinite amount of alcoholic beverages for a set price. 40 Pa. Code § 13.102(a)(3). However, section 13.102(b)(1) creates an exception which permits the sale and/or service of an unlimited or indefinite amount of alcoholic beverages for a fixed price for “catered events” which have been arranged at least twenty-four hours in advance. 40 Pa. Code § 13.102(b)(1).

Under this option, through a contractual agreement, you would arrange to use a retail licensee’s facility for the event and have the licensee furnish the alcohol and provide other services for the event. You would be permitted to sell tickets or otherwise impose fees on attendees of the catered event, but the retail licensee would technically be responsible for lawfully procuring and selling the alcohol used during the event pursuant to its license.

### *III. Participation by Manufacturers*

While manufacturers are permitted to participate in tasting events by pouring, serving, and providing information about their products, they are generally prohibited from engaging in any direct sales at such events unless they, themselves, have obtained a special permit from the PLCB.

Pennsylvania-licensed limited wineries may obtain a special permit to participate in alcoholic cider, fermented fruit beverage, mead, wine and food expositions off their licensed premises, at which they may engage in sales by the glass, by the bottle or in case lots of alcoholic cider, fermented fruit beverages, mead or wine produced under the authority of their license and provide tasting samples of wines that they have produced in individual portions not to exceed one fluid ounce, which may be sold or offered free of charge. 47 P.S. § 5-505.2(a)(4). “Alcoholic cider, fermented fruit beverage, mead, wine and food exposition” are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders, fermented fruit beverages, mead and wines in conjunction with suitable food displays, demonstrations and sales. Id. Alcoholic cider, fermented fruit beverage, mead, wine and food expositions may also include other activities, such as arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers’ markets. Id.

Similarly, Pennsylvania-licensed breweries may obtain a special permit to participate in malt or brewed beverages and food expositions off their licensed premises, at which they may engage in sales by the glass, growler, bottle or package not to exceed 192 fluid ounces in a single sale of malt or brewed beverages produced under the authority of their license, and provide tasting samples of malt or brewed beverages that they have produced in individual portions not to exceed four fluid ounces, which may be sold or offered free of charge. 47 P.S. § 4-446(c)(1). “Malt or brewed beverages and food expositions” are defined as affairs held indoors or outdoors with the intent of educating those in attendance of the availability, nature and quality of malt or brewed beverages in conjunction with suitable food displays, demonstrations and sales. Id. Malt or brewed beverages and food expositions may also include other activities, such as arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers’ markets. Id.

Also, Pennsylvania-licensed limited distilleries may obtain a special permit to participate in liquor and food expositions off their licensed premises, at which they may engage in sales by the glass, bottle, or case lots of liquor produced under the authority of their license, and provide tasting samples of liquor in individual portions not to exceed one and one-half fluid ounces, which may be sold or offered free of charge. 47 P.S. § 5-505.4(8). “Liquor and food expositions” are defined as affairs held indoors or outdoors with the intent of promoting Pennsylvania products by educating those in attendance of the availability, nature and quality of Pennsylvania-produced liquors in conjunction with suitable food displays, demonstrations and sales. Id. Liquor and food expositions may also include activities other than liquor and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and farmers markets. Id.

Limited wineries, breweries, or limited distilleries may apply for the aforementioned special permits using the PLCB’s online regulatory system, [PLCB+](#). If an SOP or an OPCP is issued for an event, or if the event is being held on otherwise licensed premises, any special permits issued to manufacturers for the same event would need to be for separately designated (and correspondingly delicensed) areas at the event location.

Additionally, please note that if your organization or group will be charging an admission fee or selling tickets for your event, and payment of the admission fee or purchase of a ticket is made mandatory for attendees to obtain access to otherwise free tasting samples being offered by a manufacturer at an event, this would be considered a separate sale of alcohol. Such sales would need to be made pursuant to an SOP, OPCP, or a retail license in accordance with the limitations previously explained above. Further, each permit only authorizes that permit holder to sell alcohol, and only authorizes the permit holder to sell its alcohol. A permit holder holding an SOP, for example, cannot require payment of a fee to it, as a condition for allowing the customer to buy wine offered for sale by a limited winery selling under the authority of its exposition permit.

#### ***IV. Potential Liability and Insurance***

Section 493(1) of the Liquor Code strictly prohibits anyone from selling, furnishing, or giving any liquor or malt or brewed beverages to any minor or visibly intoxicated person. 47 P.S. § 4-493(1). Persons violating this provision may be subject to potential fines or imprisonment. 47 P.S. § 4-494.

Potential civil or criminal liability would depend upon the particular facts as presented to a court of competent jurisdiction. It is recommended that you consult with a private attorney regarding such matters because the PLCB has no authority or expertise in the assessment of potential liability.

Finally, while there is nothing in the Liquor Code or the PLCB's Regulations that requires persons or businesses selling alcohol to maintain insurance, it is highly recommended that you seek the advice of a private attorney and/or an insurance agent regarding whether it would be advisable for you to obtain insurance coverage for your event.