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THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 23, 2013

The Honorable Martin O'Malley  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401-1991

**Re: *House Bill 978***

Dear Governor O'Malley:

We have reviewed and hereby approve House Bill 978, "Alcoholic Beverages - Winery Off-Site Permit and Wine Festival Permit," for constitutionality and legal sufficiency. While it is our view that the bill raises Commerce Clause issues, those issues are present in the current law, and are not worsened by the changes made by the bill. Therefore, the bill is approved for your signature.

As discussed in our letter on House Bill 749 and Senate Bill 767 of this session, this office has long taken the position that wine festivals and similar events cannot be limited to wine from Maryland. Moreover, in *Granholm v. Heald*, 544 U.S. 460 (2005), the Supreme Court found that a state law allowing in-state, but not out-of-state wineries to sell wine directly to consumers violated the Commerce Clause. The *Granholm* case could be read to require that out-of-state wineries be permitted to participate as vendors in wine festivals and similar events along with in-state wineries. While House Bill 978 does not permit this, current law does not either. As a result, House Bill 978 cannot be said to add a new element of unconstitutionality to the law.

House Bill 978 creates two new permits, the winery off-site permit and the wine festival permit. The winery off-site permit replaces the current winery off-site permit, which can be issued to Class 4 limited wineries for events which have as their major purpose an activity other than the promotion of alcoholic beverages and for which the participation of a winery is a subordinate activity and to provide samples, sell bottles of wine for off-site consumption, and sell wine for on-premises consumption. The winery

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special event permits also permit participation in the Montgomery County Agricultural Fair, the North Beach Friday Night Farmers' Market, and farmers' markets in Prince George's, Montgomery, Frederick, Baltimore, Carroll, St. Mary's, Dorchester, and Charles counties. The bill also repeals the farmers' market permit, which can be issued to the holder of a license other than a Class 4 limited winery license issued by the local licensing board of the jurisdiction in which the farmers' market will be held. This permit can be used only at a farmers' market that is listed in the farmers' market directory of the Maryland Department of Agriculture and allows the holder to occupy stall space at the farmers' market to sell sealed containers of wine and to provide samples. The new winery off-site permit largely duplicates the provisions of the winery special events permit, but it is issued by the Comptroller and it allows sales at farmers' markets in all counties. Thus, the bill, like current law, limits the wineries that may provide samples and sell wine at these events to those located in Maryland.

The wine festival permit provides an alternate method of organizing wine festivals in addition to the local provisions found in Article 2B, Title 8, Subtitle 3. Under a typical local wine festival provision, licenses issued by the local boards of license commissioner are available to retail licensees, Class 3 wineries, and Class 4 limited wineries. The license permits them to participate in the wine festival and to display and sell alcohol for consumption on or off the premises of the festival. The retail licensees who participate can sell wine from anywhere, while the Class 3 wineries and Class 4 limited wineries sell the wine that they make. Under House Bill 978, a nonprofit organization can get a wine festival permit from the Comptroller. That permit authorizes the holder to conduct a wine festival and to purchase wine at wholesale to provide samples and sell wine for consumption on and off the premises. In addition, the permit holder "shall provide space at a wine festival for holders of winery off-site permits" who may also "provide wine to a consumer in the same manner as the holder of the wine festival permit." The winery off-site permit holders are limited to selling their own wine and that of other holders of winery off-site permits who are in attendance. There are no limits, however, on the wine that can be purchased and provided by the holder of the wine festival permit. Thus, House Bill 978 provides the same level of access to wine festivals for out-of-state wine as is available under the current local provisions.<sup>1</sup>

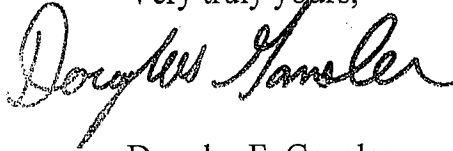
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<sup>1</sup> Under the bill, the local provisions remain in effect and continue to work as they have in the past. Thus, a winery that wanted to participate in a wine festival organized under Title 8, Subtitle 3 would have to get a license from the local board of license commissioners.

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Because House Bill 978 does not impose additional limitations on interstate commerce, it is our view that it may be signed into law.

Very truly yours,

A handwritten signature in cursive script that reads "Douglas F. Gansler". The signature is written in dark ink and is positioned above the printed name.

Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable John P. McDonough  
Stacy Mayer  
Karl Aro