

September 29, 2010

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Daneen Zaleski

**Re: Limited Winery Licenses**

Dear Ms. Zaleski:

ISSUE: This is in response to your e-mail sent August 12, 2010, wherein you advised that you are in the process of applying for a limited winery license. This license would cover an area where only wine production would occur (“Winery A”). You are planning to build, in the next year, a structure for a tasting and sales area, located two (2) miles away from the current production site (“Satellite A”). It is assumed, for purposes of this response, that the property upon which Satellite A will be built will not be covered by the limited winery license applicable to Winery A.

You further advise that, along with the tasting and sales area of Satellite A, a larger winery will eventually be built to accommodate increased wine production (“Winery B”). It is assumed, for purposes of this response, that Winery B will be located on, and contiguous with, the Satellite A property. Ultimately, your plan is for Winery B to serve as your primary site where all sales will occur, and Winery A will be used for production only. You ask if you will need to file a new application for Winery B, or if the application you have filed for Winery A can be transferred and be made the primary license for Winery B. It is assumed that you will continue using Winery A for production, and you will not be operating your limited winery exclusively on Winery B.

Board records indicate that Fero Vineyards and Winery, LLC, holds Limited Winery License No. LK-306 (LID 63941) for the premises located at 758 Moores School Road, Lewisburg, Pennsylvania.

OPINION: Section 505.2(a)(2) of the Liquor Code allows a limited winery licensee to “sell alcoholic cider, wine and wine coolers produced by the limited winery or purchased in bulk in bond from another Pennsylvania limited winery **on**

**the licensed premises.”** [40 P.S. § 5-505.2(a)(2) (emphasis added)]. It is assumed that the limited winery license you have recently received does not cover the sales and tasting area, Satellite A. Therefore, a limited winery license, standing alone, will not allow you to sell at that location.

In order to be legally authorized to sell wine off the licensed premises, you would need to seek and obtain Board approval for an additional location. Section 505.2(a)(3) of the Liquor Code provides that a limited winery may:

Separately or in conjunction with other limited wineries, **sell alcoholic cider, wine and wine coolers produced by the limited winery on no more than five (5) board-approved locations other than the licensed premises**, with no bottling or production requirement at those additional board-approved locations and under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and public service liquor licensees.

[47 P.S. § 5-505.2(a)(3)]. Requests to establish a Board-approved location are made to the Board’s Bureau of Licensing (“Licensing”), via application and an accompanying fee of two hundred twenty dollars (\$220.00). [40 Pa. Code §§ 3.64(a)(1), 11.111(d)].

Please note that the process for receiving Board approval for an additional location can be initiated even though the location has not yet been built. Section 3.64(a)(2) of the Board’s Regulations [47 Pa. Code § 3.64(a)(2)] describes the process for prior approval of the Board-approved location:

Applications for additional Board-approved locations may be submitted on a prior approval basis. If plans are approved, the necessary construction or alterations shall be completed within 6 months of the approval. Business may not be transacted until the premises has been re-inspected and the Board has approved the completed construction or alterations.

[Id.]. The location must be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public from a public thoroughfare, and all portions of the premises must be contiguous. [40 Pa. Code § 3.64(a)(3), (5)].

Licensing is charged with the responsibility of performing an investigation to ensure that the proposed location meets Board requirements for such a limited winery Board-approved location. Please be advised that the decision to approve or not to approve a location is up to Licensing, and not this office. Accordingly, if you made such an application with Licensing, an investigation would be initiated by Licensing. You will need to provide the Licensing investigator with certain information relative to the additional location, such as leases, management agreements, employee agreements, and commission agreements, if applicable. [40 Pa. Code § 3.64(a)(6)]. Please be advised that a manager must be appointed for the Board-approved location. [40 Pa. Code § 3.64(a)(4)].

You asked whether the license for Winery A could be subsequently transferred to Winery B. It is possible to transfer a limited winery license from one location to another. On June 25, 2010, Act 35 of 2010 (formerly House Bill 48) was signed into law and became effective immediately. Among other things, Act 35 amended section 505 of the Liquor Code to allow Article V licenses (including limited wineries) to be transferred to new owners, new locations or both. The statute, as amended, provides that transfers may be accomplished by submitting a written application to Licensing along with the appropriate fee. Transferring the license from Winery A to Winery B would constitute a transfer to a new location; the fee for such a transfer is five hundred fifty dollars (\$550.00).

Therefore, when you are ready for Winery B to serve as your primary site, you would not need to file a new application for Winery B. The application you have filed for Winery A may be transferred to the Winery B location, but are not be required to do so. You have the option of keeping your primary location at Winery A and having Satellite A/Winery B operate as a Board-approved additional location.

Be advised that if your future plans include sales of food and wine by the glass at Satellite A/Winery B, these sales may only be conducted at a limited winery's primary location; sales of wine for consumption at additional Board-approved locations are prohibited. [See 47 P.S. § 5-505.2]. Therefore, in order to sell food and wine for consumption at the Satellite A/Winery B location, you would need to transfer the limited winery license from the Winery A location to the Satellite A/Winery B location.

Finally, please note that legislation has been proposed that will allow limited wineries to sell food and wine by the glass at additional Board-approved locations as well as at the primary location. House Bill 115 would amend section 505.2(a)(6.1) by allowing a limited winery to sell food for consumption on or off the licensed premises and at the limited winery's additional Board-approved locations and sell wine by the glass at the licensed premises and the limited winery's additional Board-approved locations.

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  
Jerry W. Waters, Director of Office of Regulatory Affairs  
Jane Melchior, Director, Bureau of Licensing  
Tisha Albert, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 10-385