

September 12, 2013

Telephone: 717-783-9454

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John Cain

RE: Wine Coolers and Alcoholic Ciders at Brew Pubs

Dear Mr. Cain:

ISSUE: This office is in receipt of your e-mail dated August 22, 2013, wherein you indicate that you currently operate a brewery/pub, and carry wines produced by vineyards located in Pennsylvania. You are aware that vineyards operating under a limited winery license can produce wine coolers and alcoholic cider. You inquire if your brewery pub license will permit you to carry the wine coolers and ciders produced by the limited winery.

Records maintained by the Pennsylvania Liquor Control Board (“Board”) indicate that Vault Brewing Company holds Malt Beverage Manufacturing License No. G-467 (LID 6650) and Brewery Pub License No. GP-467 (LID 6651) for premises located at 10 South Main Street, Yardley, Pennsylvania.

As you stated, the Liquor Code provides that licensed limited wineries may produce alcoholic cider, wine and wine coolers. [47 P.S. § 5-505.2(a)(1)]. Further, section 505.2(a)(3) of the Liquor Code provides that licensed limited wineries 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. [47 P.S. § 5-505.2(a)(3)].

Pursuant to section 446(a)(1), a licensed brewery pub may sell any malt or brewed beverages produced by the brewery, as well as wine produced by a licensed limited winery, to individuals for consumption on the licensed premises in any container or package of any volume. [47 P.S. § 4-446(a)(2)].

The pivotal issue as to the sale of cider at your brew pub is dependent upon the alcoholic content of the cider.

“Alcoholic Cider,” as defined in the Liquor Code, is:

A beverage which may contain carbonation in an amount not to exceed three hundred ninety-two one thousandths of a gram per one hundred milliliters and flavors, produced through alcoholic fermentation of only apples or apple juice, consisting of at least one-half of one per centum, but not greater than five and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

[47 P.S. § 1-102].

Pursuant to section 102 of the Liquor Code, the term “malt or brewed beverages” means “any beer, lager beer, ale, porter or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called, and shall mean alcoholic cider.” [Id.]. Thus, ciders produced by a limited winery which meet the definition of “alcoholic cider” are considered malt or brewed beverages for purposes of the Liquor Code, and, as such, could not be sold at a brewpub.

If the cider does not fall within the parameters of the above definition, specifically if the fermentation is greater than five and one-half per centum, the product is then regarded as wine and would be able to be sold at the brewpub.

Accordingly, it would be permissible for you to sell only those products that fall within the definition of “wine” as set forth in the Liquor Code.

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
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 13-412