

February 19, 2014

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Bart Towell
5727 Firman Road
Erie, PA 16510-4509

RE: Satellite Location for Limited Winery

Dear Mr. Towell:

ISSUE: This office is in receipt of your e-mail correspondence of January 3, 2014, wherein you indicate that you are an owner of a corporation which presently holds a Pennsylvania limited winery license and that you are also involved with another business that includes members who are not part of the limited winery-licensed corporation. Moreover, you ask whether it would be permissible for your limited winery-licensed corporation to use one (1) of its satellite licenses to sell wine out of a facility owned by the other business in which you are involved. You also request to be provided with reference documentation, if available.

Pennsylvania Liquor Control Board ("Board") records indicate that you are the president and a stockholder of 6 Mile Cellars, which holds Limited Winery License No. LK-334 (LID 65473) for use at the premises located at 5727 Firman Road, Erie, Pennsylvania.

OPINION: As you already appear to be aware, section 505.2(a)(3) of the Liquor Code authorizes the holder of a limited winery license to separately, or in conjunction with other limited wineries, sell alcoholic cider, wine and/or wine coolers produced by the limited winery at no more than five (5) Board-approved locations other than the licensed premises, with no bottling or production requirement at those additional locations. [47 P.S. § 5-502.2(a)(3)]. Limited winery licensees may also sell food for consumption on or off premises and may sell by the glass the wine and alcoholic ciders that they may otherwise sell by the bottle from Board-approved satellite locations. [47 P.S. § 5-505.2(a)(6.1)].

Board-approved satellite locations for limited wineries are primarily governed by section 3.64 of the Board's Regulations, which provides as follows:

(a) Additional locations, as authorized by section 505.2(3) of the Liquor Code (47 P.S. § 5-505.2(3)) may not be used by a limited winery licensee in the operation of a licensed business unless approved by the Board.

- (1) An application for an additional location shall be made to the Board, accompanied by a \$220 fee. A renewal application shall be submitted annually and be accompanied by a \$75 fee.
- (2) 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 reinspected and the Board has approved the completed construction or alterations.
- (3) Portions of an additional Board-approved location premises shall be contiguous.
- (4) Additional Board-approved locations of a limited winery license shall be under the control of a manager appointed in accordance with § 5.16 (relating to appointment of managers).
- (5) Additional Board-approved locations of a limited winery license shall be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public from a public thoroughfare.
- (6) Limited winery licensees shall provide Board officers conducting licensing investigations of additional locations with the following:
 - (i) Leases which contain percentage agreements.

(ii) Management agreements.

(iii) Employee agreements.

(iv) Commission agreements.

(b) Limited winery licensees shall notify the Board immediately upon discontinuing the use of an additional location.

[40 Pa. Code § 3.64].

The decision of whether to approve or deny an application for a proposed satellite location for a limited winery rests solely with the three (3)-member Board. Accordingly, this office is unable to conclusively state whether or not a particular satellite location will ultimately be approved.

However, to answer your question, there is generally nothing in the Liquor Code or the Board's Regulations that prohibits the holder of a limited winery license from operating a Board-approved satellite location at premises that are owned by another business, as long as the limited winery licensee can establish that it has the right to occupy such premises. Further, it would generally not make a difference whether an officer or stockholder of the corporation holding the limited winery license also has an ownership interest in the business that owns the property to be used for the satellite location.

Nevertheless, please be advised that the Liquor Code does contain certain interlocking business prohibitions which prohibit licensees of one (1) class from holding an ownership interest in a license of a different class or from holding an ownership or leasehold interest in property for which a license of a different class has been granted, subject to certain limited exceptions. [See 47 P.S. §§ 4-411, 4-443]. Thus, if the premises at which your licensed limited winery is seeking to open a satellite location is owned by a business that holds a different class of license, such as a restaurant liquor license, for use at that premises or elsewhere, this could potentially serve as an impediment to that location being approved. This could also subject you to a citation under the Liquor Code based on your ownership interest in the other business.

Also, please be advised that, pursuant to the Board's Regulations, "[l]icensed premises may not have an inside passage or communication to or with any business

conducted by the licensee or other persons except as approved by the Board.” [40 Pa. Code § 3.52(b)]. Therefore, if another business is actually going to be conducted at the proposed satellite location and there will be an interior connection between the licensed satellite premises and such other business, this would require specific Board approval. Additionally, if the Board approves of such an interior connection, the sale of alcoholic cider, wine, and/or wine coolers would need to be confined strictly to the premises covered by the license, and the licensed area would need to be clearly indicated by a permanent partition at least four (4) feet in height. [40 Pa. Code §§ 3.53-3.54].

Furthermore, please be advised that only the named licensee may have a pecuniary interest in the operation of the licensed business. Thus, any lease agreements, management agreements, employee agreements, or commission agreements utilized for the satellite location should be carefully drafted so as to avoid conveying an unlawful pecuniary interest. Section 1.1 of the Board’s Regulations defines the term “pecuniary interest” as:

An interest that sounds in the attributes of proprietorship. There is a rebuttable presumption of a pecuniary interest when a person receives 10% or more of the proceeds of the licensed business or when control is exercised by one or more of the following:

- (i) Employing a majority of the employees of the licensee.
- (ii) Independently making day-to-day decisions about the operation of the business.
- (iii) Having final authority to decide how the licensed business is conducted.

[40 Pa. Code § 1.1].

Please note that the provisions of the Liquor Code and the Board’s Regulations discussed above are available on the Board’s website at www.lcb.state.pa.us by placing your cursor over the link for “Legal” and then selecting either “Pa Liquor Code” or “Board Regulations” respectively.

Finally, please be advised that the necessary application form is also available on the Board’s website at www.lcb.state.pa.us by placing your cursor over the link for

“Licensees,” followed by “Applications/Forms,” and then selecting “Forms.” From that point, you can scroll down through the list of forms and select the link for “PLCB-1685 Application for Additional Board-Approved Location.” Should you have any further questions or concerns regarding the Liquor Code or the Board’s Regulations, please do not hesitate to again contact this office.

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. 14-037