

April 28, 2014

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Steve Kurtz

**RE: Satellite Location at Unlicensed Restaurant**

Dear Mr. Kurtz:

ISSUE: Your e-mail of March 5, 2014 inquires whether it is permissible for a licensed limited winery to utilize its “offsite premise permit” to offer retail sales and tastings at an existing non-licensed restaurant. Operation of the winery would occur simultaneously with the restaurant operation, with some patrons choosing to bring their own alcohol and others choosing to purchase a glass of wine or a tasting from the winery. The wine would be purchased separately from the food and would be purchased from the winery, not the restaurant.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that you are a member of Lucky Cask Wine Company, LLC, holder of Limited Winery License No. LK-406 for use by it at premises located at 6073 Linglestown Road, Harrisburg, Pennsylvania.

OPINION: It is not clear from your letter whether you are referring to satellite locations or wine exposition permits.

Wine exposition permits allow limited wineries to participate in wine and food expositions off their licensed premises and sell wine and alcoholic ciders by the glass, bottle or in case lots, and sell or give away samples in individual portions not to exceed one (1) fluid ounce. A limited winery can obtain a number of special permits per calendar year, but each permit can be used for only up to **THIRTY (30)** consecutive days and the total number of days for all of the special permits cannot exceed **ONE HUNDRED (100)** days per year. The fee for each special permit is thirty dollars (\$30.00) per day, and applications for the permit are available from the Board’s Bureau of Licensing (“Licensing”) at 717-783-8250, or via the Board’s website, [www.lcb.state.pa.us](http://www.lcb.state.pa.us).

Be further advised that wine 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 Pennsylvania-produced wines in conjunction with suitable food

displays, demonstrations and sales,” and may include other activities such as arts and crafts, musical activities, cultural and agricultural exhibits, and similar activities. [47 P.S. § 5-505.2(a)(4)].

Holders of wine exposition permits are also permitted to provide tasting samples of wine in individual portions not to exceed one (1) fluid ounce. These samples may be sold or offered free of charge. [47 P.S. § 5-505.2(a)(4)].

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)].

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.

The Liquor Code imposes strict prohibitions on interlocking businesses; i.e., those businesses operated pursuant to different classes of licenses, such as retail and manufacturing licenses. Apart from that, 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.

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].

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. 14-179