

August 22, 2014

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Stephen Russell

**RE: Mall Kiosk for Limited Winery**

Dear Mr. Russell:

ISSUE: This is in response to your e-mail of August 11, 2014, in which you stated that you are investigating the possibility of selling your wines in a local mall during the holidays. You indicate that the available temporary spaces are open kiosks, although mall management refers to them as “carts” since they are temporary. Your wines would be displayed on shelves, with the sales being processed beside the shelves.

The spaces are not enclosed, and mall management requires that employees must remain in such proximity that allows them to touch the kiosk at any time. There are two (2) styles, one (1) that is enclosed by a locked tarpaulin overnight, and one (1) that has glass doors that can be locked overnight. The mall has twenty-four (24)-hour security, and there is available secure storage in another section of the mall.

You also note that, during the Christmas holiday season, the mall occasionally is open around the clock. Lease requirements are that kiosks be staffed whenever the mall is open, or else the vendor is subject to a fine. You ask if it is possible to be granted permission to sell wine during this time, as less than five percent (5%) of your sales typically are items other than wine.

Pennsylvania Liquor Control Board (“Board”) records indicate that R Wine Cellar holds Limited Winery License No. LK-344 (LID 66120) for the premises located at 2014 Smallman Street in Pittsburgh, Pennsylvania.

OPINION: With regard to your question about whether there are any legal issues you would need to address in order to open a kiosk location in your local mall, it is assumed for purposes of this response that your winery intends to operate this

kiosk as an additional Board-approved location, also known as a satellite location, inside the mall.

In order to be legally authorized to sell wine at such a kiosk, you would need to seek and obtain Board approval for an additional location. 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)]. Additionally, a manager must be appointed for the additional location. [40 Pa. Code § 3.64(a)(4)].

A limited winery additional Board-approved location application is available from the Board's Bureau of Licensing ("Licensing") at 717-783-8250 or on the Internet at [www.lcb.state.pa.us](http://www.lcb.state.pa.us). Click on "For Licensees," then "Applications and Forms," then "Application Packet for Limited Winery Additional Board-Approved Location." There is a fee of two hundred twenty dollars (\$220.00). There is also a renewal fee of seventy-five dollars (\$75.00). [40 Pa. Code § 3.64(a)(1)].

Licensing is charged with performing an investigation to ensure that the proposed location meets Board requirements for an additional Board-approved location. Be advised that the decision to approve or not to approve a location is up to Licensing, and not this office. If you made such an application, an investigation would be initiated and you would need to provide Licensing 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)]. Next, the area where your wines would be stored during non-sale hours would likewise have to be investigated and approved by the Board.

In response to your second question about hours of sales, in February 2014, the Board granted blanket authorization to limited winery licensees to sell during the same hours as restaurant licensees, without a requirement for further approval. Restaurant liquor licensees, and thus by extension limited winery licensees, are required to stop selling alcohol and/or malt or brewed beverages at 2:00 a.m. [47 P.S. § 4-406(a)]. However, with a Sunday sales permit, you may sell alcohol on Sundays between 9:00 a.m. and 11:00 a.m., provided that you offer a "meal" beginning at 9:00 a.m. [47 P.S. §§ 4-406(a)(3); 4-432(f)]. A "meal" is defined as "food prepared on the premises, sufficient to constitute breakfast, lunch or dinner; it shall not mean a snack, such as pretzels, popcorn, chips or similar food." [47 P.S. § 4-406(e)]. Your proposed business plan as set forth in your e-mail does not include any food availability at the mall kiosk.

In addition to the above-noted blanket authorization for extended hours, section 5-505.2(a)(6.3) of the Liquor Code gives limited winery licensees the ability to request further extensions of permissible selling hours, so you may make such a request of the Board. [47 P.S. § 5-505.2(a)(6.3)]. Therefore, you may wish to file an application for a satellite location and also request the ability to sell during all the hours required by mall management as a condition of the proposed kiosk lease.

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  
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