

December 23, 2014

Stephen Gumpf

**RE: First Year Production by Limited Winery**

Dear Mr. Gump:

ISSUE: This office is in receipt of your e-mail dated November 14, 2014, in which you ask how the limitation contained in section 505.2(a)(2) of the Liquor Code [47 P.S. § 5-505.2(a)(2)] applies to the first year of production. You also ask what is considered “produced” for purposes of this section. For example, you ask if you blend the wine bought from a different winery, does that fall within the meaning of the term “produced” and would not be counted as bought in bulk.

Board records indicate that Nectar Valley Winery LLC is currently applying for Limited Winery License No. LK-438 (LID 70610) for use by it at 748 Shenango Road, Beaver Falls, Pennsylvania.

OPINION: As you note, section 505.2(a)(2) of the Liquor Code provides that a licensed limited winery may:

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, 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, and to Pennsylvania winery licensees: *Provided, That a limited winery shall not, in any calendar year, purchase alcoholic cider or wine produced by other limited wineries in an amount in excess of fifty per centum of the alcoholic cider or wine produced by the purchasing limited winery in the preceding calendar year.* In addition, the holder of a limited winery license may purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process. Such wine may be sold in bottles bearing the purchasing limited winery's label or the producing limited winery's label. Such wines, if sold by the board, may be sold by the producing limited winery to the purchasing limited winery at a price lower than the price charged by the board.

[47 P.S. § 5-505.2(a)(2)].

In response to your inquiry, a limited winery in its first year of production would not be permitted to purchase any alcoholic cider or wine produced by other limited wineries (except as noted later in this Opinion). The plain language of this section establishes a formula through which the maximum permissible amount of purchased wine is determined. This formula does not carve out any exception for the first year of production. Therefore, since the amount of alcoholic cider or wine produced in the first year by the purchasing limited winery is zero – fifty (50%) percent of such amount would also be zero.

Regarding your second question, the Liquor Code, in pertinent part, defines wine as “liquor which is *fermented* from grapes and other fruits, having alcoholic content of twenty-four per centum or less.” [47 P.S. §1-102]. As such, the term produce means to ferment. While a limited winery is free to engage in blending activities, it may only do so with wines it produces or with wines that it has lawfully procured.

As referenced above, section 505.2(a) only provides two (2) methods through which a limited winery can purchase wine produced by another limited winery. [47 P.S. § 5-505.2(a)]. The first is purchasing the wine in bulk in bond from another Pennsylvania limited winery on the licensed premises. This method of procurement is subject by the fifty percent (50%) limitation discussed above. The second is to purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process, this is not subject to the fifty-percent (50%) limitation. Therefore, if the wine used for blending is purchased in bulk in bond, it is subject to the fifty percent (50%) limitation.

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.

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Very truly yours,

FAITH S. DIEHL  
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement  
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LCB Advisory Opinion No. 14-632