

July 9, 2015

Matthew A. Shirk, CEO  
Adams Vintners, LLC  
30 East Main Street  
Annville, PA 17003-1411  
**VIA E-MAIL:** [matt@iheartADAMS.com](mailto:matt@iheartADAMS.com)

**RE: Online Sales Operations**

Dear Mr. Shirk:

ISSUE: This is in response to your e-mail of June 11, 2015, wherein you state that Adams Vintners is beginning online sales and has found an organization that specializes in creating and maintaining online store fronts, as well as providing packing and shipping services. The organization does not hold any liquor licenses, but will provide expertise that you do not have in-house. You request guidance on structuring the relationship between Adams Vintners and this organization.

Records of the Pennsylvania Liquor Control Board (“Board”) indicate that Adams Vintners, LLC holds Limited Winery License No. LK-396 (LID 68669) for use at the premises at 30 East Main Street, Annville, Pennsylvania.

OPINION: As you are aware, a limited winery is required to operate in compliance with Liquor Code § 505.2 [47 P.S. § 505.2] and Board Regulations § 11.111 [40 Pa. Code § 11.111]. As a threshold matter, it is imperative that your operations be separate from that of the organization that is providing a service of maintaining the online store front and shipping since the unlicensed sale of beer, wine or spirits by anyone other than the Board, or an entity properly licensed by the Board, is illegal in Pennsylvania. [47 P.S. §§ 4-491(1); 4-492(2)].

Please be advised that only the named licensee may have a pecuniary interest in the operation of the licensed business; unlicensed third parties may not have an unlawful pecuniary interest in a license. [47 P.S. § 4-404]. Thus, any lease agreements, management agreements, employee agreements, commission

agreements, and any other type of agreement for payment 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; see also Appeal of E-J Westside Inn Corp., 68 Pa. Cmwlth. 323, 449 A.2d 93 (1982)].

Accordingly, the relationship between Adams Vintner, LLC and the organization assigned to create and maintain the on-line store front must be structured to ensure that there is no pecuniary interest held by the organization. It must also be structured to ensure that the sales are conducted by your limited winery, and not another party.

Also, while a licensed limited winery is authorized to transport, ship and otherwise deliver its products to customers, a third party hired to undertake this work must hold a valid Pennsylvania transporter-for-hire license. [40 Pa. Code § 9.11]. Please be advised that any storage of the wine by the organization would require it to obtain a bailee-for-hire license. [47 P.S. § 5-501]. This type of license permits the holder to store other persons' liquor on its licensed premises.

Since this is a significant commercial undertaking, you are strongly encouraged to seek professional guidance from private counsel having experience in Pennsylvania liquor law and contracts.

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Should you have any other questions and/or issues related to the Liquor Code or the Board's Regulations, please feel free to once 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. 15-282