

November 18, 2015

Benjamin and Suzanne Morrison  
Stone Barn Cellars Winery  
3050 Pottstown Pike  
Spring City, PA 17475  
**VIA E-MAIL**

**RE: Township Limitations on Limited Winery's Production**

Dear Mr. and Ms. Morrison:

ISSUE: This is in response to your two (2) e-mails dated October 27, 2015, wherein you state that South Coventry Township wants to limit to six thousand (6,000) gallons per year the amount of wine that your licensed limited winery may produce. You note that the Liquor Code permits a limited winery to produce up to two hundred thousand (200,000) gallons of wine per year, and you ask whether the township may limit your production.

You also state that your township wants to limit your procurement of fruit used to produce your wines such that one hundred percent (100%) of the fruit must be sourced from Pennsylvania. You note your understanding that federal decisions have ruled that limitations on where fruit can be sourced are unenforceable.

Finally, in a telephone conversation with this office on October 29, 2015, you also stated that the township is restricting your use of bulk wines from another (unidentified) limited winery, which you believe is permitted under the Liquor Code.

Records of the Pennsylvania Liquor Control Board ("Board") indicate that Stone Barn Cellars LLC holds Limited Winery License No. LK-370 (LID 67399) for use at the premises located at 3050 Pottstown Pike, Spring City, Pennsylvania.

OPINION: Your understanding of the Liquor Code provisions is essentially correct as it applies to the Board. That is, a "limited winery" is defined in the Liquor Code as a winery with a maximum output of two hundred thousand (200,000) gallons per year. [47 P.S. § 1-102]. Furthermore, while the Liquor Code states that limited wineries may only produce wine made from Pennsylvania

grown agricultural commodities, this limitation has been deemed unenforceable as a result of the U.S. Supreme Court decision in the case of Granholm v. Heald, 544 U.S. 460 (2005), and the Pennsylvania federal court decision in Cutner v. Newman, 398 F. Supp.2d 389 (E.D. Pa. 2005), both involving legislative distinctions between in-state and out-of-state wineries.

Accordingly, a limited winery licensee is not required by the Board to produce its wine using fruit from sources in Pennsylvania; rather, a licensed limited winery may produce wine from agricultural commodities without regard to the source of such commodities. Thus, as it applies to the Board, you would be permitted to import and use fruits and/or juice from out-of-state.

On the issue of the use of bulk wines in your production, the Liquor Code provides that a limited winery may also purchase wine, in bulk in bond, from another Pennsylvania limited winery, but shall not purchase more than fifty percent (50%) of the amount of wine the purchasing limited winery produced in the preceding calendar year. [47 P.S. § 5-505.2(a)(2)].

Notwithstanding all of the above, and consistent with the information you were provided during your telephone conversation with this office, a municipality may place zoning or other restrictions on your operation that are more stringent than those in the Liquor Code and Board's Regulations, although generally such regulations must be liquor-neutral. That being said, the Board will not become involved in such matters, as they are outside of the Board's jurisdiction.

Finally, it is strongly recommended that you consult private counsel experienced in Pennsylvania liquor law and municipal law to assist you with the various issues you are experiencing in the operation of your commercial enterprise.

Should you have any additional questions, do not hesitate to 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.**

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Very truly yours,

**RODRIGO J. DIAZ**  
**EXECUTIVE DEPUTY 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- 471