

November 20, 2015

Lisa M. Jaras
Corporate Paralegal
HoustonHarbaugh
VIA E-MAIL

RE: Satellite Location for Limited Winery

Dear Ms. Jaras:

ISSUE: This office is in receipt of your e-mail dated October 23, 2015, wherein you indicate that your offices represent Papa Joe's Wine Cellar ("Papa Joe's") which holds a limited winery license. You explain that Papa Joe's, which is located near Erie, Pennsylvania, wants to sell wine at an unlicensed restaurant in Meadville, Pennsylvania. You further explain that Papa Joe's wants to set up a stand in this restaurant to sell its wine. You note that Papa Joe's will not be serving the wine to restaurant patrons.

You further indicate that Papa Joe's does not want to be responsible for the day-to-day management of the stand. Rather, Papa Joe's intends to hire an employee of the winery or an employee of the restaurant to manage the stand. You ask whether this would be permissible or if an officer or director of Papa Joe's is required to "man" the stand at the restaurant. You also ask whether Papa Joe's will need to obtain a license for the stand.

Pennsylvania Liquor Control Board ("Board") records indicate that Papa Joe's holds Limited Winery License No. LK-432 (LID 69954) for use by it at premises located at 214 Textor School Road, Zelienople, Pennsylvania.

OPINION: 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)]. Limited winery licensees may also sell food for consumption on or

off premises and may sell by the glass the wine and alcoholic ciders that they may otherwise sell by the bottle from Board-approved satellite locations. [47 P.S. § 5-505.2(a)(6.1)].

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(emphasis added)].

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, such as Papa Joe's proposed stand, will ultimately be approved.

However, 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. Further, it would generally not make a difference whether an officer or stockholder of the corporation holding the limited winery license also has an ownership interest in the business that owns the property to be used for the satellite location.

Nevertheless, please note that your client could not merely have an employee of the restaurant "man the stand." Pursuant to section 3.64 of the Board's regulations, additional Board-approved locations of a limited winery license are required to be under the control of a manager appointed in accordance with § 5.16 of the Board's Regulations. [40 Pa. Code §§ 3.64(a)(4) and 5.16].

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].

Furthermore, please be advised that only the named licensee may have a pecuniary interest in the operation of the licensed business. Thus, any lease agreements, management agreements, employee agreements, or commission agreements utilized for the satellite location 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]. Provided that your client meets the above conditions, someone other than an officer or director of Papa Joe’s may “man” the satellite location.

Please note that the provisions of the Liquor Code and the Board’s Regulations discussed above are available on the Board’s website at www.lcb.state.pa.us by placing your cursor over the link for “Legal” and then selecting either “Pa Liquor Code” or “Board Regulations” respectively.

Finally, please be advised that the necessary application form is also available on the Board's website at www.lcb.state.pa.us by placing your cursor over the link for "Licensees," followed by "Applications/Forms," and then selecting "Forms." From that point, you can scroll down through the list of forms and select the link for "PLCB-1685 Application for Additional Board-Approved Location."

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,

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

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