

February 23, 2016

Brenda Adams
Allegro Winery
VIA E-MAIL

Re: Sales by Importer

Dear Ms. Adams:

ISSUE: This is in response to your e-mail dated January 26, 2016, wherein you advise that you hold a limited winery license. You ask if it is permissible to have an importer purchase wines from your winery wholesale, and then sell them directly to restaurants or other retail licensees in Pennsylvania, even though the wine is not carried in the stores of the Pennsylvania Liquor Control Board (“Board”).

Records of the Board indicate that Allegro Wine Company, LLC, holds Limited Winery License No. LK-163 (LID 48979) for the premises at 3475 Sechrist Road, Brogue, Pennsylvania.

OPINION: In your e-mail, you cite to section 410 of the Liquor Code:

Importers’ licenses shall permit the holders thereof to bring or import liquor from other states, foreign countries, or insular possessions of the United States, and purchase liquor from manufacturers located within this Commonwealth, to be sold outside of this Commonwealth or to Pennsylvania Liquor Stores within this Commonwealth, or when in original containers of ten gallons or greater capacity, to licensed manufacturers within this Commonwealth.

[47 P.S. § 4-410(e)]. You then state that this section does not explicitly state that an importer licensee is prohibited from selling wine directly to retail licensees.

Section 410 states that importers may sell product outside of Pennsylvania or to Pennsylvania Liquor Stores within the Commonwealth. These are the only sales privileges of the importer licensee.

Moreover, section 491(1) of the Liquor Code provides that it shall be unlawful for anyone to sell any liquor within Pennsylvania except in accordance with the Liquor Code. [47 P.S. § 4-491(1)]. In other words, if the privilege to sell liquor is not expressly provided within the Liquor Code, the privilege is not permitted. Because an importer's sales privileges are limited to selling to the Board or to entities outside of the Commonwealth, an importer may not sell directly to a retail licensee.

Also, section 491(2) provides that it shall be unlawful for any person, except a manufacturer or the Board or the holder of a sacramental wine license or of an importer's license, to possess or transport any liquor or alcohol within the Commonwealth which was not lawfully acquired from a Pennsylvania Liquor Store or a licensed limited winery in Pennsylvania, except in accordance with section 488 (which deals with the direct shipment of wine) or the Board's Regulations. [47 P.S. § 4-491(2)]. If a retail licensee were to purchase product directly from a licensed importer, the retail licensee would be in violation of section 491(2) of the Liquor Code.

Therefore, the answer to your question is no, it is not permissible for an importer to sell wine directly to restaurants and other retail licensees in Pennsylvania.

Please note, however, that products not listed for regular sale through the Board's wine and spirits stores may be acquired by residents of the Commonwealth (including licensees of the Board) via special liquor order ("SLO"). [47 P.S. § 3-305]. SLOs may be placed at any of the Board's Liquor Stores, and the Board contacts the importer of the wine and sets up the transaction. When the product is in the store, the Board contacts the person who placed the order, who then comes to the store and completes the sale. If you have any questions on this process, you may contact Karen Romberger in the Bureau of Product Selection at (717) 787-2846.

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

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BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE
PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

RODRIGO J. DIAZ
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. 16-037