

March 18, 2016

Lee Noble
VIA E-MAIL

RE: Interlocking Business Inquiry

Dear Mr. Noble:

ISSUE: This office is in receipt of your e-mail dated February 1, 2016, wherein you ask if a sales representative for “a beer/wine/liquor wholesaler or distributor in Pennsylvania” is permitted to sell its products to a licensed bar or restaurant of which the sales representative is an owner or partial owner. In a follow-up telephone conversation on February 29, 2016, you clarified that your inquiry pertained specifically to a sales representative for a winery engaging in direct sales of the winery’s products to a retail licensee (restaurant) of which the sales representative is a partial owner or employee.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Pour Limited holds Restaurant Liquor License No. R-18387 (LID 64849) for the premises located at 114 North Prince Street, Lancaster, Pennsylvania.

OPINION: The Liquor Code prohibits any hotel, restaurant, or club liquor licensee, or any malt or brewed beverage licensee, or any officer, servant, agent, or employee of such licensee, from being at the same time employed, directly or indirectly, by any distributor, importing distributor, manufacturer, importer, or vendor licensee, or any out-of-state manufacturer. 47 P.S. § 4-493(11). This “interlocking business prohibition” of the Liquor Code also prohibits any distributor or importing distributor, or any officer, servant, agent, or employee of such licensee, from being at the same time employed, directly or indirectly, by any other distributor, importing distributor, manufacturer, importer, vendor, out-of-state manufacturer, hotel, restaurant, malt or brewed beverage licensee, or club liquor licensee. Id. For purposes of this subsection, an officer, servant, agent, or employee of a licensee is someone who has either an ownership interest in the license or who receives compensation for his/her work on behalf of the licensee. Although an exception exists to allow employees of licensed manufacturers to also work at a retail licensee located at the same premises as the manufacturer, that does not appear to be the scenario upon which your inquiry is based. Therefore, the sales representative would

not be permitted to simultaneously be employed by, or have any ownership interest in, both the licensed winery and a retail licensee, such as a restaurant.

A limited exception to the above exists. A person who holds a five percent or less interest in a publicly- or privately-held entity owning a restaurant or eating place retail dispenser license is not deemed to have a "financial interest" and is not subject to the interlocking business prohibitions if the person is not an officer or employee of, nor has an interest in, nor exercises any control over any other licensed entity that engages in any sales to or from the restaurant or eating place retail dispenser licensee. 47 P.S. §§ 4-411(e), 4-443(g).

Please note that the interlocking business prohibition does not apply to the sales of the winery's products, but rather the employment or involvement by individuals involved with the licensees, regardless of whether any business relationship exists between the entities.

Please do not hesitate to contact this office should you have additional questions.

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.

Sincerely,



RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Jerry W. Waters, Director, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

LCB Advisory Opinion No. 16-082