

July 22, 2016

Brenda Adams
Allegro Vineyards
3475 Sechrist Road
Brogue, PA 17309
VIA E-MAIL

Re: Can Importer LLC Member Serve as Agent for Limited Winery

Dear Ms. Adams:

ISSUE: This is in response to your e-mail sent May 11, 2016, wherein you indicate that your company holds a limited winery license. You ask if the limited winery may employ the services of an individual who is a member of a limited liability company (“LLC”) that has an importer’s license. You would like this individual to do missionary work for your winery in a geographic area that is two hours away from your winery.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that Allegro Wine Company LLC, doing business as Allegro Vineyards, holds Limited Winery License No. LK-163 (LID 48979) for the premises at 3475 Sechrist Road, in Brogue, Pennsylvania.

OPINION: Section 3.63 of the PLCB’s Regulations provides that “a limited winery licensee may employ individuals to solicit orders, off the licensed premises, for wine produced by it or to promote the sale of wines off the premises. Agents may advertise and promote the sale of merchandise by ‘missionary work’ of only brands sold by the limited winery licensee by whom the agents are employed and may solicit orders from licensees and make deliveries in properly registered vehicles.” 40 Pa. Code § 3.63.

Please be aware that Act 39 of 2016, which will be effective as of August 8, 2016, will change many aspects of the Liquor Code, including how wine may be shipped. A summary of these changes will be posted on the PLCB’s website in the near future.

Please note that agents may advertise and promote sales by “missionary work” of only those brands sold to the PLCB by the vendor by whom the agents are employed. 40 Pa. Code § 13.73(a). Agents may solicit from licensees – or others – orders for those brands of liquor which have been listed with the Special Liquor Purchase Division by the vendors by whom the agents are employed. 40 Pa. Code § 13.73(c). Agents may solicit from licensees or other persons, orders for those brands of liquor which have been designated by the PLCB as luxury items. Orders for

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luxury items obtained by vendors' agents shall be filed with one of the PLCB's Stores. 40 Pa. Code § 13.73(d).

With regard to your question, a member of an LLC that holds an importer license is not a licensee; it is the LLC that holds the license. Therefore, what you are asking is if an individual that is involved with an importer licensee can serve as your winery's agent.

There is nothing in the Liquor Code or the PLCB's Regulations that would prohibit a member of an LLC that holds an importer license to serve as an agent for a limited winery. However, please be aware that this individual does not have privileges of the importer licensee. Unless the individual holds a bailee-for-hire license, he or she would not be able to legally store any of your wine for missionary work purposes.

Moreover, even if you were to engage the importer licensee to promote your product, section 410 of the Liquor Code provides that an importer may only keep and store in its warehouse. 47 P.S. § 4-410(c). The importer would have to take title to whatever product it would be using for missionary work purposes.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB'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.

Sincerely,



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. 16-226