

August 18, 2016

Jennifer Eckinger
VIA E-MAIL

Re: Questions about Act 39

Dear Ms. Eckinger:

ISSUE: This is in response to your e-mail sent on August 9, 2016, wherein you ask, on behalf of the Pennsylvania Wine Association, two questions about Act 39 of 2016 (“Act 39”). You ask where Pennsylvania limited wineries can purchase Pennsylvania wines to serve in their licensed areas. You cite section 446(a)(1) of the Liquor Code in connection with this question. You also ask if wineries are able to sample Pennsylvania spirits to consume on site at the licensed properties or if they may only sell it.

OPINION: Section 505.2(a)(2) of the Liquor Code allows a limited winery to:

Sell alcoholic cider, wine and wine coolers produced by the limited winery or **purchased in bulk in bond from another Pennsylvania limited winery**...Provided, That **a limited winery shall not**, in any calendar year, **purchase** alcoholic cider or wine produced by other limited wineries in **an amount in excess of fifty per centum** of the alcoholic cider or wine produced by the purchasing limited winery in the preceding calendar year. In addition, the holder of a limited winery license **may purchase wine in bottles** from another Pennsylvania limited winery **if these wines undergo a second fermentation process**. Such wine may be sold in bottles bearing the purchasing limited winery’s label or the producing limited winery’s label.

47 P.S. § 5-505.2(a)(2) (emphasis added). Therefore, in response to your first question, a limited winery may purchase wine from another Pennsylvania limited winery, as long as the wine is purchased in accordance with the limitations set forth in the statute above.

Jennifer Eckinger

August 18, 2016

Page 2

With regard to your second question, it is assumed that you are asking if a limited winery can offer its patrons a sample taste of spirits or if a limited winery can only sell the spirits and not give an amount away for free. While Act 39 did not include language addressing the offering of samples, generally speaking, a special license is not necessary in order to give away alcohol. Further, this office is guided by the language in section 505.4 of the Liquor Code, which provides that a limited distillery may provide samples of not more than one and one half ounces on the licensed premises or at the PLCB-approved locations. 47 § 5-505.4(b)(5). Therefore, this office concludes that a limited winery may offer the same amount of samples that a limited distillery itself would be permitted to offer, one and one half ounces.

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. 16-305