

October 12, 2016

Suzonne Bechtold
VIA E-MAIL

Re: Numerous Questions on Limited Winery Sales

Dear Ms. Bechtold:

ISSUE: This is in response to your e-mail dated July 15, 2016, wherein you advise that you are a new salesperson for a winery, which is presumed to hold a limited winery license. You ask numerous questions regarding sales by the limited winery. Your questions will be restated below, followed by the response of this office.

OPINION: Please note that Act 39 of 2016, which made numerous changes to the Liquor Code, became effective on August 8, 2016. The answers below incorporate the changes made by Act 39.

1. [You need to know] “If we need any other license than a limited winery license for me to be out selling [the limited winery’s product]?”

Limited winery licensees are permitted to sell and deliver wine via a transporter-for-hire or in a vehicle that is properly registered with the Pennsylvania Liquor Control Board (PLCB). 40 Pa. Code § 11.111(a)(2). No additional permits are required to sell the wine; however, a direct wine shippers license is necessary to ship or deliver wine. Limited winery licensees that deliver wine are required to have painted or affixed on each side of each vehicle used in the operation of the business their name, address, including the street name, and number as shown on the license, and the license number as shown on the license in letters no smaller than four inches in height. 40 Pa. Code § 9.22.

2. “Will grocery stores be able to buy from me or just from the state stores?”

Grocery stores will not be able to sell wine unless they have a restaurant or hotel liquor license and have obtained a wine expanded permit that will enable them to sell wine. You may sell your wine to any restaurant or hotel liquor licensee, including those with a wine expanded permit.

3. “Will beer distributors be able to sell wine?”

No, beer distributors have not been given the privilege of selling wine.

4. “Are there such a thing as wine distributors [sic] in Pennsylvania?”

No, Pennsylvania does not have wine distributors.

5. “If not.... Why?”

The General Assembly has not amended the Liquor Code to allow for the existence of wine distributors.

6. “Who.... Can I sell to... The public?”

A limited winery licensee may sell alcoholic cider, wine, and wine coolers directly to other limited winery licensees, retail licensees (e.g., restaurant licensees, hotel licensees, club and catering club licensees, and public service licensees), the public, and the PLCB. 47 P.S. § 505.2(a)(2). In addition, a limited winery may sell to breweries, brewery pubs, and limited distilleries. 47 P.S. §§ 4-446, 5-505.4.

7. “What.... kind of venue/event center/ grocery store/ casino/ flea/farmers markets/ Restaurants [sic] / bars / tea houses/ bed and breakfasts/ wedding planners/ caterers/ hotels/ etc....”

As explained above, you may sell to members of the general public for their personal consumption. You may also sell to retail licensees and other manufacturers, as explained in answer number six. The law regarding sales to grocery stores was explained in answer number one.

Currently, casinos typically have restaurant or hotel liquor licenses and therefore you would be able to sell your wine to such entities.

With regard to flea and farmers’ markets, a limited winery may obtain a permit to sell at a farmers market; there is no authority to sell at a flea market. A farmers’ market is defined as:

Any building, structure or other place:

- (1) owned, leased or otherwise in the possession of a person, municipal corporation or public or private organization;
- (2) used or intended to be used by two or more farmers or an association of farmers, who are certified by the Department of Agriculture of the Commonwealth to participate in the Farmers' Market Nutrition Program subject to 7 CFR Pt. 249 (relating to Senior Farmers' Market Nutrition Program (SFMNP)), for the purpose of selling agricultural commodities produced in this Commonwealth directly to consumers;
- (3) which is physically located within this Commonwealth; and
- (4) which is not open for business more than twelve hours each day.

47 P.S. § 505.2(c). The farmers' market permit entitles the holder to participate in more than one farmers' market at any given time and an unlimited number throughout the year and to sell, during the standard hours of operation of the farmers' market, alcoholic cider or wine produced by the holder under the authority of the underlying limited winery license by the bottle or in case lots. 47 P.S. § 5-505 (4.1). Since, under section 505.2 of the Liquor Code, limited winery licensees are permitted to produce and to sell specific products, you would be permitted to sell both wine and alcoholic cider products using your farmers' market permit. 47 P.S. §§ 5-505.2(a)(1), 5-505.(2)(a)(2).

Tea or coffee houses typically do not have a license to sell alcohol, so you would not be able to sell to them unless they were purchasing for personal consumption or for some use – for example, in cooking – not for resale as an alcoholic beverage.

You may sell wine to a bed and breakfast, as they are permitted to offer a free bottle of wine to guests who are staying overnight. 47 P.S. § 4-491(1).

Wedding planners typically do not have a license to sell alcohol. Caterers typically do not have a license to sell alcohol. Restaurants with a liquor license may obtain an off premises catering permit and therefore may cater events that are not located at their premises, so you may be able to sell to such licensees.

8. "If our winery is not big enough/able to produce enough cases to sell to a state store.... Then who can I sell to? How many cases do we need to produce to be allowed in a state store?"

Please note that there are no case requirements to be permitted to sell your product to the PLCB. With regard to the remainder of your question, please see the answers to questions six and seven.

9. "What do I have to do to get into the state store?"

Please visit the PLCB's website at www.lcb.state.pa.us. From the "Wine & Spirits Providers" link, visit "Getting Started" and "PA Proud Wine & Spirits." The information on those pages should provide you with the information you need.

10. "How much can I carry in my car and if I can have open bottles used for sampling in my car?"

The Liquor Code does not restrict the amount of wine you may carry in your car, as long as the car is properly registered with a licensee or transporter-for-hire. Open bottles in vehicles are not addressed in the Liquor Code, but are in the Crimes Code. It is recommended that you seek the advice of your local police or District Attorney's office.

11. "Can I sell to neighboring states? Cross lines with the same in my car? Can I ship to different states?"

Whether you can sell, deliver, or ship wine to other states is dependent upon that state's laws. Each state has different laws and requirements, so you should check with that state before proceeding.

12. "Can the state legally without being discriminatory not let a winery into a state store because they don't produce certain quantities when they have a viable product?"

The PLCB does not require a limited winery to produce a minimum amount. However, if a limited winery's product is sold in PLCB stores, the limited winery will be expected to fill purchase orders.

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13. "Why would the state prohibit a viable business from selling it elsewhere because the state doesn't have enough room to carry it?"

Selling at the PLCB's stores is only one option for limited winery licensees. Please see the answers to questions six and seven.

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
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LCB Advisory Opinion No. 16-329