

September 12, 2016

Paul Zientek
VIA E-MAIL

RE: Grocery Store Sampling

Dear Mr. Zientek:

ISSUE: This office is in receipt of your e-mail of July 27, 2016, wherein you inquire if Act 39 will permit “in store sampling of wine” in grocery stores.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Vintage Imports, Inc, holds Importer License No. I-568 (LID 40050) for use by it at premises located at 200 Rittenhouse Circle West, Unit 5, Bristol, Pennsylvania.

OPINION: A sampling promotion is intended to introduce consumers to the manufacturer’s product. Samplings must adhere to the following criteria: (1) samples may be provided by the manufacturer’s representatives and distributor or importing distributor licensees to licensed and unlicensed customers; (2) samples must be in unopened containers of the smallest commercially available size; (3) the providing of such samples cannot be conditioned upon any purchase requirement; samples are limited to one container per patron in any offering. 40 Pa. Code § 13.231. Act 39 did not change this procedure.

Likewise, if properly imported, liquor or wine manufacturers, vendors and vendors’ registered agents may provide samples to licensees and non-licensees, provided they comply with the conditions set forth in Chapter 13, Subchapter B of the PLCB’s Regulations. Specifically, section 13.81 of the PLCB’s Regulations, 40 Pa. Code § 13.81, permits each registered agent of a licensed vendor to use one case of each brand of liquor, which includes wine and spirits, as samples each calendar month. These samples must be purchased from the PLCB by the registered agent at a price which includes the PLCB’s cost plus a 30% mark-up, and any required taxes. Samples may not be purchased at retail at the PLCB’s Wine and Spirit Shoppes. Instead, a separate order for samples must be placed either by the vendor or the vendor’s registered agent. Samples of liquor are restricted to half-pints and to half-bottles or smaller size of wines unless the PLCB approves another size. Each sample

bottle must have a specific sample label affixed to it before it leaves the PLCB's possession. Further, licensed vendors are required to keep certain records regarding samples. Finally, no product can be distributed as samples unless federal approval has been obtained. This was not changed by Act 39

Nor did Act 39 change the requirements for a "tasting" which is different than a "sampling". Tastings may be conducted by sponsors upon licensed or unlicensed premises. 40 Pa. Code § 13.211(a). A sponsor of a tasting event may be any licensed vendor, importer, distributor, importing distributor or manufacturer or its agent or employee who is twenty-one years of age or older. 40 Pa. Code § 13.201. For tasting events conducted by sponsors, products used must be properly procured and registered, and taxes on the products must be paid. 40 Pa. Code § 13.211(b)(1). There can be no purchase requirement associated with such tasting. 40 Pa. Code § 13.211(b)(2). Products offered must not exceed a standard size alcoholic beverage for that product. PLCB Regulations provide that a standard-sized alcoholic beverage for a serving of wine is four fluid ounces. 40 Pa. Code § 13.201.

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. 16-340