

September 12, 2016

Karen Collins
VIA E-MAIL

RE: Sale of Wines

Dear Ms. Collins:

ISSUE: This office is in receipt of your e-mail of July 27, 2016, wherein you advise that a local “Wellness Center” (“the Center”) wants to carry your wines to sell to its customers. You advise the Center wants to open a small “store” such as a kiosk inside its existing business. You pose two questions which will be addressed below.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Blue Mountain Vineyards & Cellars, Ltd. holds Limited Winery License No. LK-136 (LID 43916) for use by it at premises located at 7627 Grape Vine Drive, New Tripoli, Pennsylvania. PLCB records further indicate that you are a PLCB-approved manager.

OPINION: Your questions will be addressed as follows:

- 1) Can your business operate a kiosk inside the Center as one of your “stores”?

Initially, by “stores” it is assumed you are referring to a satellite location pursuant to section 505.2(a)(3) of the Liquor Code. 47 P.S. § 5-505.2(a)(3). As you appear to be aware, section 505.2(a)(3) of the Liquor Code 47 P.S. § 5-505.2(a)(3), permits a limited winery licensee (“LK”) to:

[s]eparately or in conjunction with other limited wineries, sell alcoholic cider, wine and wine coolers produced by the limited winery on no more than five (5) board-approved locations other than the licensed premises, with no bottling or production requirement at those additional board-approved locations and under such conditions and regulations as the board may enforce, to the board, to individuals and to brewery, hotel, restaurant, club and

public service liquor licensees. If two or more limited wineries apply to operate an additional board-approved location in conjunction with each other, the wineries need only have one board-approved manager for the location, need only pay one application fee and need not designate specific or distinct areas for each winery's licensed area. Each limited winery must file an application for such an additional board-approved location, and such location shall count as one of the five permitted for each limited winery. Each limited winery is responsible for keeping only its own complete records. A limited winery may be cited for a violation of the recordkeeping requirements of sections 512 and 513 pertaining to its own records only.

47 P.S. § 5-505.2(a)(3). Additionally, PLCB-approved satellite locations for limited wineries are primarily governed by section 3.64 of the PLCB's Regulations. 40 Pa. Code § 3.64. The regulation provides, in pertinent part, that the additional PLCB-approved locations "shall be enclosed by soundly constructed walls, with controlled points of access and egress directly accessible to the general public from a public thoroughfare." 40 Pa. Code § 3.64 (a)(5).

From the information provided in your e-mail, it does not appear that the kiosk in "the Center" would meet these requirements and would thus be impermissible.

Moreover, as to the sharing of space, section 3.52(b) of the PLCB's Regulations, 40 Pa. Code § 3.52(b), prohibits a licensed premises from having an interior connection with another business, unless the connection is approved by the PLCB. Likewise, pursuant to section 3.52(c) of the PLCB's Regulations, a licensee is prohibited from conducting another business on the licensed premises without PLCB approval.

Further, section 3.53 of the PLCB's Regulations 40 Pa. Code § 3.53 states that when the PLCB has approved an inside passage or communication between the licensed premises and another business, storage and sales of liquor and malt or brewed beverages shall be confined strictly to the premises covered by the license. Section 3.54 of the PLCB's Regulations, 40 Pa. Code § 3.54, states that when the PLCB has approved an inside passage or communication between the licensed premises and another business, the extent of the licensed area shall be clearly indicated by a permanent partition at least four feet in height. Finally, section 3.56 of the PLCB's Regulations, 40 Pa. Code § 3.56, states that the licensed portion of the premises must meet all requirements of the Liquor Code for that particular license.

All that being said, please note that the decision to license a particular location is not made by this office but by the three-member Board, itself ultimately, and by the PLCB's Bureau of Licensing, initially.

- 2) Must your company employ an individual to conduct wine sales or can an employee of the Center sell wine?

As mentioned, *supra*, assuming *arguendo* that the area in question would qualify for a satellite location, please be advised that section 505.2(a)(3) permits an LK to sell alcohol at its satellite locations. It does not permit other entities to sell alcohol. Moreover, section 505.2(a)(3) requires an LK to have a PLCB-approved manager work at the location as well. Consequently, the Center would not be permitted to sell alcohol in its name but rather all sales must be made by your company.

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. 16-341