

September 22, 2016

Scott Zoccolillo
VIA E-MAIL

RE: Sales of Wine for Off Premises Consumption

Dear Mr. Zoccolillo:

ISSUE: Your e-mail of July 22, 2016 seeks clarification regarding the wine expanded permits available with the passage of Act 39 of 2016.

First, you note that Act 39 states that there is an application fee of \$2000.00 plus a renewal fee of 2% of the cost of wine purchased from the Pennsylvania Liquor Control Board (“PLCB”) for off-premises consumption. You state that you have a wine list that consists of more than 500 bottles. You inquire whether you have to provide a separate “to go” offering list or whether you can offer any of the wines on your list for take-out sales. If the latter, you inquire whether you can track take out sales in house and calculate your renewal fees based off of that.

Second, you note that Act 39 states that sales of wine must occur at a specifically designated area of the licensed premises. You inquire whether this applies to restaurants and, if so, whether you have to have a separate room, case and/or area where take out wines are stored.

Third, you note that Act 39 states that sales of wine must occur at a designated register. You inquire whether this applies to restaurants. You state that you have eight point-of-sale terminals that your servers use to ring in your guests’ orders. You inquire whether you have to designate one of them for take-out alcohol sales and, if so, whether the alcohol has to be sold separately or whether one of your guests could add a bottle to their dinner check to take home.

Records of the PLCB indicate that Mywei, Inc. holds Restaurant Liquor License No. R-11890 (LID 49534) for use by it at premises located at 1091 Lancaster Avenue, Berwyn, Pennsylvania, 19312-1242.

OPINION: Act 39 creates a wine expanded permit (“WEP”) for restaurant and hotel licensees. 47 P.S. § 4-415(a)(1). This permit allows its holder to sell wine-to-go until 11:00 p.m. on Mondays through Saturdays, and on Sundays if the holder holds a Sunday sales permit. 47 P.S. § 4-415(a)(2).

There is a \$2,000.00 application fee for this permit and an annual renewal fee of 2% of the cost of wine purchased from the PLCB for off-premises consumption. 47 P.S. § 4-415(b).

In response to your first question, there is no requirement that the holder of a WEP provide a separate “to go” offering list or otherwise designate in advance which wines will be offered for take-out sales. Rather, any wine lawfully possessed by the WEP holder may be sold for off-premises consumption. WEP holders will track take out sales and submit their 2% annual renewal fees based on the cost of wine purchased from the PLCB and subsequently sold for off-premises consumption.

In response to your second question, as indicated above, the WEP is ancillary to a restaurant or hotel liquor license, and the provisions of the permit therefore apply to licensed restaurants. Sales of wine pursuant to a WEP must occur on the licensed premises, but other (non-alcohol) items may be purchased at the same location. 47 P.S. § 4-415(a)(4). The specifically designated areas for a WEP are the areas licensed under the underlying liquor license, although you may further limit the specific areas where sales will occur. You are not required to have a separate room, case and/or area where take out wines are stored, but wine may be stored in a non-contiguous area that is not accessible to the public, is locked at all times, and is not accessible to employees under eighteen years old. 47 P.S. § 4-415(a)(6).

As to your third question, sales of wine pursuant to a WEP must occur at a designated register which is staffed at all times by a cashier who is at least eighteen years old and is RAMP-trained. No sales may occur elsewhere (including self-checkout lanes). 47 P.S. § 4-415(a)(9). As indicated above, other (non-alcohol) items may be purchased at the same location. 47 P.S. § 4-415(a)(4). You may designate as many registers as you wish so long as they are on the licensed portion of the premises and so long as they conform with the above.

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.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rodrigo J. Diaz".

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. 16-383