

October 27, 2016

James Lord
VIA E-MAIL

RE: Act 39 Cider Questions

Dear Mr. Lord:

ISSUE: This office is in receipt of your e-mail dated September 1, 2016, wherein you advise that you have been producing ciders “over 5.5” since you opened your business. You ask several questions pertaining to your production of cider following the recent enactment of Act 39 of 2016 (“Act 39”). Your questions and the corresponding answers are set forth below.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate that IN Cider, Inc. holds Limited Winery License No. LK-435 (LID 70319) for the premises located at 504 South East Street, Coudersport, Pennsylvania.

OPINION:

1. You indicate that you have been paying a “winery commodities fee.” You ask if the fee will cover the cider and wines you produce, or if you will have to start “doing a malt brewed excise on the ciders.”

The PLCB does not administer a winery commodities fee or excise tax for malt or brewed beverages, and therefore cannot offer information or guidance on this issue. You may wish to contact either the Alcohol and Tobacco Tax and Trade Bureau (www.ttb.gov), the Pennsylvania Department of Revenue, or the Pennsylvania Department of Agriculture for information regarding payment of applicable taxes and fees.

2. You cite to the definition of Alcoholic Cider, as it was amended by Act 39, and ask for clarification that the definition still includes “any fruit” as part of the classification of the beverage as a cider.

Following the enactment of Act 39, the definition of alcoholic cider found in section 102 of the Liquor Code is now:

a beverage which may contain carbonation in an amount not to exceed three hundred ninety-two one thousandths of a gram per one hundred milliliters and flavors, produced through alcoholic fermentation of any fruit or fruit juice, consisting of at least one-half of one per centum, but not greater than eight and one-half per centum, alcohol by volume and sold or offered for sale as alcoholic cider and not as a wine, a wine product or as a substitute for wine, in bottles, cases, kegs, cans or other suitable containers of the type used for the sale of malt or brewed beverages in this Commonwealth.

47 P.S. § 1-102.

Therefore, the definition of alcoholic cider remains unchanged insofar as it allows alcoholic fermentation of any fruit or fruit juice.

3. Your next inquiry concerns whether “mead under 8.5%” would qualify as a cider. You note that mead is made with honey as an agricultural commodity, which generally classifies it as a wine; however, if the mead has an alcohol content under 8.5%, you ask if it could be considered a cider, now that the definition of cider has changed with regard to its alcoholic content limitation. You ask if you can produce mead that includes some portion of fruit with honey “such as Cyzers (Mead made with Cider and honey).”

Wine, as defined in section 102 of the Liquor Code, means “liquor which is fermented from grapes and other fruits, having alcoholic content of twenty-four per centum or less [and] shall not include any products containing alcohol derived from malt, grain, cereal, molasses or cactus.” 47 P.S. § 1-102. However, section 505.2 of the Liquor Code expands the definitions of both alcoholic cider and wine beyond fermented grapes and other fruits to also include alcoholic cider and wine made from any “agricultural commodity,” including “agricultural, apicultural, horticultural, silvicultural and viticultural commodities.” 47 P.S. § 5-505.2. Accordingly, and as you point out, since mead is derived from honey, which is an apicultural commodity,

mead is generally considered to be a wine and not a malt or brewed beverage in Pennsylvania. Therefore, as a licensed limited winery, you are permitted to manufacture and distribute mead as wine, so long as the product meets the definitions set forth above, based upon its ingredients and alcoholic content. Conversely, alcoholic cider cannot be made from fermented honey.

Please do not hesitate to contact this office should you have additional questions.

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, Office of Regulatory Affairs
Tisha Albert, Director, Bureau of Licensing
Jeffrey Lawrence, Assistant Director, Bureau of Licensing

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