

December 10, 2018

Richard Woolley
VIA E-MAIL

RE: Grape Sourcing

Dear Mr. Woolley:

ISSUE: This office is in receipt of your e-mail of October 16, 2018, wherein you “seek clarification of certain provisions in Pennsylvania Act 166 of 2016 and its impact on limited winery license holders.” You further state that numerous limited wineries (“LK licensees”) are sourcing 100% of their grapes from outside of Pennsylvania. Finally, you indicate that it is becoming not economically viable to continue to run an LK license in Pennsylvania.

Pennsylvania Liquor Control Board (“PLCB”) records indicate that Weathered Vineyards, LLC holds Limited Winery License No. LK-399 (LID 68846) for use by it at premises located at 7670 Carpet Road, New Tripoli, Pennsylvania.

OPINION: As an initial matter, if you believe there are violations of the Pennsylvania Liquor Code or PLCB’s regulations, you may wish to contact the Pennsylvania State Police, Bureau of Liquor Control Enforcement, as that agency is responsible for enforcement. You may do so by calling 800-932-0602 or e-mailing ra-iceheadquarters@pa.gov .

As to your specific inquiry, while the Liquor Code states that limited wineries may only produce wine made from Pennsylvania grown agricultural commodities, this limitation has been deemed unenforceable as a result of the U.S. Supreme Court decision in the case of Granholm v. Heald, 544 U.S. 460 (2005), and the Pennsylvania federal court decision in Cutner v. Newman, 398 F. Supp.2d 389 (E.D. Pa. 2005), both involving legislative distinctions between in-state and out-of-state wineries. Accordingly, a limited winery licensee is not required to produce its wine using fruit from sources in Pennsylvania; rather, it may utilize fruit from other sources, whether from Pennsylvania or outside of Pennsylvania. Therefore, as the law presently stands, a licensed limited winery may produce wine from agricultural

commodities without regard to the source of such commodities. Thus, LK licensees are permitted to import and use fruits and/or juice from out-of-state.

Moreover, as you appear to be aware, section 505.2(a)(2) of the Liquor Code provides that a licensed limited winery may:

Sell alcoholic cider, wine and wine coolers produced by the limited winery or **purchased in bulk in bond** from another Pennsylvania limited winery on the licensed premises, 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, and to Pennsylvania winery licensees: Provided, That a limited winery shall not, in any calendar year, purchase alcoholic cider or wine produced by other limited wineries in an amount in excess of fifty per centum of the alcoholic cider or wine produced by the purchasing limited winery in the preceding calendar year. **In addition, the holder of a limited winery license may purchase wine in bottles from another Pennsylvania limited winery if these wines undergo a second fermentation process. Such wine may be sold in bottles bearing the purchasing limited winery's label or the producing limited winery's label.** Such wines, if sold by the board, may be sold by the producing limited winery to the purchasing limited winery at a price lower than the price charged by the board.

47 P.S. § 5-505.2(emphasis supplied).

In addition, pursuant to Granholm, *supra*, the PLCB is required to license out of state entities that wish to obtain a Pennsylvania LK license. All LK licensees are entitled to maintain up to five additional board-approved locations. 47 P.S. § 5-505.2(a)(3). It is possible for an entity in California to have a Pennsylvania LK license for use in California and have additional Board-approved locations in Pennsylvania.

Finally, as a creature of statute, the PLCB is bound to follow the dictates of the Liquor Code. Should you wish to see the current state of the law changed, it is suggested you contact your local elected officials.

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,

A handwritten signature in cursive script that reads "Rodrigo J. Diaz".

RODRIGO J. DIAZ
CHIEF COUNSEL

cc: Pennsylvania State Police, Bureau of Liquor Control Enforcement
Tisha Albert, Director of Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 18-435