

December 24, 2018

Michael Erwin
Mountain Lake Winery
VIA E-MAIL

Re: Wine Sales at Farmers' Market

Dear Mr. Erwin:

ISSUE: This is in response to your e-mail dated October 22, 2018, wherein you indicate that you have a limited winery which has recently been issued a farmers market permit. You outline an arrangement wherein the owners of the farmers market would act as your “agents” and make sales on your behalf on the days you were not physically present. Under this arrangement, the market owners would receive a 25% commission of all sales made by them. You further indicate the wine and sales records would be stored on site, only accessible by yourself and the market owners. You inquire whether this arrangement is permissible.

Records of the Pennsylvania Liquor Control Board (“PLCB”) indicate Mountain Lake Winery, LLC (“Mountain Lake”), holds Limited Winery License No. LK-33337 (LID 84224) for the premises located at 391 Bailey Road, Towanda, Pennsylvania.

OPINION: A limited winery may obtain a permit to sell at a farmers market. A farmers market is defined as:

Any building, structure or other place:

(1) owned, leased or otherwise in the possession of a person, municipal corporation or public or private organization;

(2) used or intended to be used by two or more farmers or an association of farmers, who are certified by the Department of Agriculture of the Commonwealth to participate in the Farmers' Market Nutrition Program subject to 7 CFR Pt. 249 (relating to Senior Farmers' Market

Nutrition Program (SFMNP)), for the purpose of selling agricultural commodities produced in this Commonwealth directly to consumers;

(3) which is physically located within this Commonwealth; and

(4) which is not open for business more than twelve hours each day.

47 P.S. § 5-505.2(c).

A farmers market permit entitles the holder to participate in more than one farmers market at any given time and an unlimited number throughout the year and to sell, during the standard hours of operation of the farmers market, alcoholic cider or wine produced by the holder under the authority of the underlying limited winery license by the bottle or in case lots. 47 P.S. § 5-505.2(a)(4.1). Since, under section 505.2 of the Liquor Code, limited winery licensees are permitted to produce and sell specific products, you are permitted to sell both wine and alcoholic cider products using your farmers market permit. 47 P.S. §§ 5-505.2(a)(1), 5-505.2(a)(2). Additionally, a permit holder must provide written notice of the date, time, and location for which a permit is to be used to the Bureau of Liquor Control Enforcement (“BLCE”) at least two weeks prior to an event. 47 P.S. § 5-505.2(a)(4.1).

While neither the Liquor Code nor the PLCB’s Regulations dictate what employees may work on behalf of a winery at a farmers market, they do not permit entities other than the licensed entity to sell alcohol. Therefore, while the market owners may run the market, the market would not be permitted to sell alcohol in its name, but rather all sales must be made by your company.

There are several other potential issues of which you should be aware. Initially, please note that section 3.52(a) of the PLCB’s Regulations prohibits a licensee from allowing other persons to operate another business on the licensed premises or for the licensee to conduct another business on the licensed premises without approval from the three-member Board. 40 Pa. Code § 3.52(a). Therefore, the market would not be able to conduct any of its own sales on your licensed premises, nor would your winery be permitted to conduct another business on the licensed premises without Board approval.

Finally, please be advised that if the market were to exercise control over the sale of your wine by employing a majority of the employees of the licensee, independently making day-to-day decisions about the operation of the business, or having final

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authority to decide how the licensed business is conducted, the market would need to be named as a management company on your license, following approval of a management agreement by the three-member Board. 40 Pa. Code § 1.1.

Should you have any other questions and/or issues related to the Liquor Code or the PLCB's Regulations, please feel free to once again contact this office.

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
Tisha Albert, Director of Office of Regulatory Affairs
B.L. Peifer, Director, Bureau of Licensing

LCB Advisory Opinion No. 18-444