

December 24, 2018

Sharon Klay
VIA E-MAIL

Re: Infused Products

Dear Ms. Klay:

ISSUE: This is in response to your separate faxes dated November 12, 2018, wherein you ask: 1) if you could sell hemp-infused wine; and 2) if you could sell alcohol-infused candies and rum balls in your retail space.

Pennsylvania Liquor Control Board (“PLCB”) records indicate Christian W. Klay Winery, Inc. holds Limited Winery License No. LK-125 (LID 39049) for use by it at premises located at 412 Fayette Springs Road, Chalk Hill, Pennsylvania.

OPINION: Regarding hemp-infused products, there is nothing in the Pennsylvania Liquor Code or the PLCB’s Regulations that pertains to your question, as hemp is a non-alcoholic product and not regulated by the PLCB. You should contact the Pennsylvania Department of Agriculture at 1-866-366-3723 or www.agriculture.pa.gov for information regarding whether it is legal to sell hemp-infused products in Pennsylvania. Additionally, you may wish to contact the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) and the federal Food and Drug Administration (“FDA”) to determine what federal laws are applicable to the sale of such products. You may visit TTB’s website at www.ttb.gov and the FDA’s website at www.fda.gov for more information. Please note that earlier this year, TTB provided additional guidance on infusing alcohol products with hemp.

As to your second question, section 505.2 of the Liquor Code provides for a number of products a winery may sell in addition to its wine. 47 P.S. §5-505.2(a)(6.1). However, there is nothing in the Liquor Code or the PLCB’s Regulations which directly addresses the sale of food made with liquor. Section 305.1 of the Liquor Code prohibits the sale of confectionery containing alcohol or liquor within Pennsylvania but does not control sales of confectionery containing alcohol or sales of confectionery where the amount of alcohol within the product at issue is under 0.5% by volume. 47 P.S. § 3-305.1. “Confectionery” is not defined in the Liquor

Code, but this office has opined in the past that baked goods, such as rum cakes, would not be considered confectionery under section 305.1, especially since any alcohol is likely to evaporate once the food item is baked. Therefore, the sale of such baked items would not be precluded by section 305.1 of the Liquor Code.

Regarding other, non-wine products available for sale, section 3.52(c) of the PLCB's Regulations provides that a licensee may not conduct another business on the licensed premises without PLCB approval. 40 Pa. Code § 3.52(c). While the PLCB has, in the past, approved requests by licensees to sell products on their licensed premises, these requests are addressed on a case-by-case basis. Therefore, if you wish to sell products other than those explicitly permitted by your license, you will need to request permission from the Board so that the request may be considered. That request should be made through the Bureau of Licensing.

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. 18-458