

STATE OF
DEPARTMENT OF BUSINESS AND
DIVISION OF ALCOHOLIC

Final Order No. BPR-99-00076 Date 1-7-99

FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Sarah Wachman

IN RE:

PETITION FOR DECLARATORY
STATEMENT, on behalf of THE
GREAT HOUSE OF WINE, INC.

DS 98-033

Petitioner.
_____ /

DECLARATORY STATEMENT

The Director of the Division of Alcoholic Beverages and Tobacco, ("DIVISION") renders this Declaratory Statement pursuant to section 120.565, Florida Statutes. On October 13, 1998, The Petitioner, The Great House of Wine, Inc., filed a Petition for Declaratory Statement, containing a statement of facts, and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement is attached hereto and incorporated by references.

ISSUE PRESENTED

The Petitioner presents the following interpretations of the Beverage Law, listed as (a) through (d), and requests that the Division approve Petitioner's interpretation, or provide an explanation

of the Division's contrary interpretation of the relevant statutes and regulations.

(a) Pursuant to § 561.41, Fla. Stat. (1997), "each licensed wine distributor" must have a "principal office" somewhere in Florida, and may have as many "branch" offices as it wishes, either within or outside Florida. The principal office and all Florida branch offices operate under a single alcoholic beverage license.

(b) The determination of whether a wine distributor meets the requirements of §561.411 Fla. Stat. (1997) is based on the consolidated warehouse space, consolidated inventory, and consolidated sales from all warehouse locations leased by, owned by, or dedicated to the company.

(c) A wine distributor is not required to separately license each warehouse location, or each branch office, within the State of Florida.

(d) A warehouse that is licensed as a wine distributor's storage location is a "Florida Bonded Warehouse," without having to separately apply for a Bonded Warehouse license. As a Florida Bonded Warehouse, a wine distributor may store wines owned by Florida licensed importers, or owned by Florida licensed vendors, at any fee agreed to by the parties.

FINDINGS OF FACT

1. On or about October 13, 1998, Great House of Wines, Inc., filed a Petition for Declaratory Statement

with the Division. The DIVISION renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement filed herein.

2. The conclusion in this Declaratory Statement is based on the facts described in the Petitioner's Petition for Declaratory Statement and the particular factual assertions described therein. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described in the Petition change. All of the facts presented in the Petition were duly considered and form the basis for this Declaratory Statement. The facts and arguments of the Petitioner as stated in the Petition for Declaratory Statement are as follows:

Petitioner is a licensed distributor of beer and wine, with its principal office at 88101 Overseas Highway, Islamorada, Monroe County, Florida 33037. The building in which Petitioner operates is owned by the founding shareholders of The Great House of Wine, Inc.

Since receiving its temporary license as a Florida beer and wine distributor on July 2, 1997, Petitioner has taken orders and received payment at its Monroe County Post Office Box and its physical location. During that same period, Petitioner has received wine at, and shipped wine from, its physical location at 88101 Overseas Highway, Monroe County, Florida.

Petitioner sells wine to vendors in several Florida counties. It pays extra Freight charges, and

endures longer delivery and shipment times, to bring wine into the Florida Keys and ship it back to the mainland, than it would if it stored its inventory on the Florida mainland.

In September 1998, Petitioner located a suitable warehouse site in Miami-Dade County, and contacted agency licensing personnel in Miami and Tallahassee to determine whether it could change the location of its place of business to Miami-Dade pursuant to §561.33(1), Fla. Stat. (1997) (Licensee moving to new location). In addition, during September 1998, Petitioner inquired of agency licensing personnel whether Petitioner could continue to maintain its principal office at 88101 Overseas Highway, in Monroe County, pursuant to § 561.41, Fla. Stat. (1997) (Maintenance and designation of principal office by distributors...).

The Chief Executive Officer (CEO) and Chief Operations Officer (COO) of Petitioner are residents of, and have professional practices (law and architecture / engineering respectively) in, Monroe County. The Vice-President for Operations is a resident of Monroe County. These three officers comprise the entire management of Petitioner. In order to manage the business activities of Petitioner, the President and Secretary-Treasurer believe it is necessary to keep the offices of Petitioner, and the CEO's and COO's offices, as close to one another as possible.

Petitioner was told by telephone, in September 1998, by agency personnel in Miami that both locations (Miami-Dade and Monroe) would have to be licensed as separate distributor locations. A few days later, after Petitioner's counsel brought § 561.411, Fla. Stat., to the attention of the agency's Miami licensing personnel, they agreed (by telephone) that Petitioner could transfer its location to Dade County pursuant to § 561.33, Fla. Stat., while maintaining its "mailing address" at 88101 Overseas Highway, Monroe County.

Petitioner's counsel then contacted the agency's

Director of Licensing, Barry Schoenfeld, by telephone, at his Tallahassee office, and brought Petitioner's interpretation of §§ 561.33 and 561.41, Fla. Stat., to the Director's attention. Mr. Schoenfeld later contacted Petitioner's counsel that The Great House of Wine, Inc., could not maintain its statutory "principal office" in Monroe County while receiving, storing, and shipping wine at its Dade County location, unless both locations met the requirements of §561.411, Fla. Stat. (1997), and each location was licensed separately.

In accordance with foregoing statutory interpretations by the agency, Petitioner has decided to apply to move its entire business from Monroe County to Dade County, pursuant to § 561.33, Fla. Stat. (1997). An appointment has been made, with agency personnel in Miami, to review said application and grant a temporary license on Friday, October 16, 1998.

Petitioner is substantially affected by the statutes, rules, and interpretations at issue herein. Petitioner alleges that the statutes and regulations at issue are susceptible of multiple interpretations, and the agency's interpretation is not the most logical or the fairest one. Petitioner is adversely affected because:

(a) it is concerned about a lack of control over its operations, with its principal (Dade County) office 40 miles away from the offices of its CEO and COO;

(b) the statutory interpretations provided by the agency personnel prevent Petitioner from leasing warehouse space in other parts of Florida ("branch offices under § 561.41, Fla. Sta.), while maintaining a "principal office" in whatever County it chooses;

(c) Petitioner's employees are discriminated against by these agency policies, in being required to work in an area dangerous to their

personal safety. They should not be required to work in warehouse districts such as those in Dade County, Florida, when they could do their work as well in a safe non-warehouse neighborhood; and

(d) There is no rational basis for requiring a distributor to co-locate its offices with a warehouse. Warehouse districts tend to be of a seedy, noisy, and dirty character, inconsistent with office districts; and

(e) Monroe County does not have any "warehouse districts," and Monroe County has an absolute moratorium on the construction of any warehouses.

The agency interpretations described above make it difficult, if not impossible, for a wine distributor to operate in Monroe County except under very restricted space constraints.

CONCLUSIONS OF LAW

3. The DIVISION has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08 and 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapters 561 and 562, Florida Statutes, specifically sections 561.22 and 561.42, Florida Statutes.

4. The Petitioner is substantially affected by the statutory provisions cited above and has standing to seek this Declaratory Statement.

5. Section 561.08, Florida Statutes, empowers and directs the DIVISION to enforce the provisions of the Beverage Law and perform such acts as may be necessary to carry out the provisions

thereof. Accordingly, it is the DIVISION that construes and interprets the alcoholic beverage laws of the State of Florida and makes the determination as to whether they are applicable to a specific set of facts.

6. An agency's determination of the intent of a statutory provision within its power to enforce and interpret as well as agency action based upon this construction, will generally be upheld by a court. Thus, where an agency is acting within the scope of its authority as defined by law, a court will not substitute its judgment for that of an agency, where there is room for a difference of intelligent opinion on the subject. Storrs v. Pensacola & A.R. Co., 11 So. 266 (1892); Wilson v. Pest Control Com., 199 So.2d 277 (4th DCA 1967); Baptist Hospital, Inc. v. State, Department of Health and Rehabilitative Services, 500 So.2d 620 (First DCA 1986); SOS Alford v. School Board, 511 So.2d 438 (1st DCA 1987).

7. Therefore, it is the responsibility and duty of the DIVISION to construe and interpret the provisions of the Beverage Law and apply said provisions to a stated set of facts in a reasonable manner, that comports with the purpose, intent and spirit of the statutory provisions and which avoids an absurd result.

8. It is well established in Florida jurisprudence that a statute should be interpreted so as to give effect to the clear and unambiguous legislative intent. Zuzkerman v. Alter, 615 So.2d 661 (Fla. 1993). However, of equal importance is the well-established principal that a statute should be interpreted so as to avoid arbitrary, absurd and/or unreasonable results. Carawan v. State, 515 So.2d 161 (Fla. 1987); Towerhouse Condominium, Inc. v. Millman, 475 So.2d 674 (Fla. 1985); Fletcher v. Fletcher, 573 So.2d 941 (Fla. 1st DCA 1991). Hamilton v. State, 645, So.2d 555 (Fla. 2nd DCA 1994).

9. The Petition's first present issue must be divided into several distinct issues. (See issue in paragraph 14(a) of the Petition). The first issue raised by the Petition is whether pursuant to § 561.41, Fla. Stat. (1997), each licensed wine distributor must have a "principal office" somewhere in Florida. The second issue is whether it may have as many "branch" offices as it may wish, either within or outside Florida. The third issue is whether all the Florida branch offices may operate under a single alcoholic beverage license.

10. Section 561.41, Florida Statutes, requires the following regarding a distributors principal place of business and branch offices:



Each licensed manufacturer, distributor, and importer and each registered exporter must have within this state an office designated as its principal office within this state and may maintain branch offices within or without this state. The principal and branch offices of each manufacturer, distributor, and importer within this state must, during regular defined business hours, be kept open for the inspection of authorized employees of the division. Each registered exporter must provide access to authorized employees of the division to all business premises, inventories, and records, including all records of transporters, warehouses, and exporters required by the Federal Government, for the purpose of conducting semiannual audits and inventories. The division may adopt rules to carry out the purposes of this section.

11. Section 561.41, Fla. Stat. (1997), requires the Petitioner, as a licensed wine distributor, to maintain a "principal office" somewhere in Florida. There is no limitation in the Beverage Law effecting how many "branch" offices it may maintain, either within or outside, the State of Florida.

12. Section 564.02, Florida Statutes, establishes the licensing fees that must be paid before engaging in business of manufacturing, distributing or selling wines. Regarding the issue of licensure of wine distributor branch offices, section 564.02(3)(a), Florida Statutes, provides in pertinent part:

Each distributor authorized to sell brewed beverages containing malt, wines, and fortified wines in counties where the sale of intoxicating liquors, wines, and beers is permitted shall pay for each and every such establishment or branch he or she may operate or conduct

a state license tax of \$1,250.

13. The several branch offices may not operate under a single alcoholic beverage license. Again, the Beverage Law requires that each licensed establishment or branch must be licensed separately. Section 564.02(3)(a), Florida Statutes.

14. The second presented issue is whether satisfaction of the requirements in §561.411, Fla. Stat. (1997) may be based on the consolidated warehouse space, consolidated inventory, and consolidated sales from all warehouse locations leased by, owned by, or dedicated to the company. (See issue in paragraph 14(b) of the Petition).

15. Section 561.411, Florida Statutes, requires licensed distributors to satisfy the following qualifications:

No distributor's license shall be issued to or held by any person or business, which does not meet and maintain the following qualifications with respect to its warehouse inventory and sales.

(1) The distributor must maintain warehouse space that is either owned or leased by the distributor, or dedicated to the distributor's use in a public warehouse, which is sufficient to store at one time:

(a) An inventory of alcoholic beverages which is equal to at least 10 percent of the distributor's annual case sales to licensed vendors within this state or to licensed vendors within the malt beverage distributor's exclusive sales territory; or

(b) An inventory for which the cost of acquisition

is not less than \$100,000.

(2) The distributor must maintain at all times, in a warehouse which is either owned or leased by the distributor or in public warehouse space dedicated to the distributor's use, an inventory of alcoholic beverages:

(a) Which consists of not less than 5 percent of the distributor's annual sales to licensed vendors within this state or within the malt beverage distributor's exclusive sales territory; or

(b) For which the cost of acquisition is not less than \$100,000. The inventory required herein shall be owned by the distributor, not held on consignment, and not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

(c) For purposes of calculating inventory or percentage of annual sales as required by paragraphs (a) and (b), the calculation shall not include private label inventory whose label is owned by a vendor.

(3) The distributor must sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. For purposes of this section, a distributor shall be conclusively presumed to be selling to licensed vendors generally, if:

(a) The distributor sells to at least 25 percent of the licensed vendors in the county wherein the distributor's warehouse is located or sells to at least 25 percent of the licensed vendors in the malt beverage distributor's exclusive sales territory; or

(b) The distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any ongoing 12-month period consists of at least 50 percent of individual sales which are in quantities of 10 cases or less.

16. The requirements in §561.411, Fla. Stat., cannot be based on the consolidated warehouse space, inventory, and sales from multiple warehouse locations. Each licensed location must independently satisfy the requirements of in §561.411, Fla. Stat.

There is nothing in the clear language of §561.411 that would permit a licensed distributor to use consolidated warehouse space, inventory, and sales from multiple warehouse locations to satisfy the statutory requirements. §561.411 does not refer to warehouses in the plural. It refers to satisfying the requirements with "a warehouse" (singular). §561.411(2), states: "The distributor must maintain at all times, in a warehouse which is either owned or leased by the distributor or in public warehouse space dedicated to the distributor's use, an inventory of alcoholic beverages." (Emphasis added).

17. The issue presented in paragraph 14(c) of the Petition is duplicative of the issue presented in paragraph 14(a), it also asks whether a wine distributor is required to license each warehouse location or branch office. Again, a wine distributor is required to separately license each warehouse location or branch office. See paragraphs 9 through 13 of this Declaratory Statement.

18. The fourth issue presented in the Petition is whether a

warehouse that is licensed as a wine distributor's storage location is a "Florida Bonded Warehouse," without having to separately apply for a Bonded Warehouse license. (See issue statement in Paragraph 14(d) of the Petition).

19. Section 561.01(3), Florida Statutes, defines a "state bonded warehouse" as any licensed warehouse used to store alcoholic beverages. Section 562.25, Florida Statutes, contains the Beverage Laws provisions for state bonded warehouses, it provides:

(1) No operator of any storage warehouse shall accept for storage in such warehouse any alcoholic beverage subject to tax under the beverage law until such operator shall have obtained from the division a permit to store such beverage and shall have filed a bond payable to the division, conditioned upon the full compliance by such operator with the provisions of this section. This section shall not apply to a federal bonded warehouse owned wholly by, and operated solely for, a manufacturer or distributor licensed under the beverage law. Such permit shall issue upon the payment of one dollar to the division, and may be refused, suspended, or revoked in the same manner and upon the same grounds that the license of a distributor may be refused, suspended, or revoked. Such bond shall be in an amount of not more than five thousand dollars nor less than one thousand dollars, in the discretion of the division, with a surety company licensed to do business in the state as surety.

(2) On or before the tenth day of each month the operator of any state bonded warehouse shall report, on forms furnished by the division, the amount of such beverages on deposit in such warehouse on the last day of the previous calendar month and the amount of such beverages deposited in and withdrawn from such warehouse during the previous calendar month, except that no report

shall be required as to such beverages on which all taxes have been paid which have been deposited in storage by a vendor licensed under the beverage law.

20. A wine distributor's storage location is not a "State Bonded Warehouse." In order to qualify as a state bonded warehouse, the operator of the warehouse must separately apply for a State Bonded Warehouse permit, file a bond payable to the division, and comply with all of the conditions in Section 562.25, Florida Statutes. There is no exception under the law for licensed distributors. The Petition does not contain any facts to demonstrate that the Petitioner's storage location has satisfied any of the requirements of section 562.25, Florida Statutes. Accordingly, under the facts presented in the Petition, the Petitioner's storage location does not qualify as a state bonded warehouse.

21. The final issue presented in the Petition is whether as a Florida Bonded Warehouse, a wine distributor may store wines owned by Florida licensed importers, or owned by Florida licensed vendors, at any fee agreed to by the parties. (See issue statement in Paragraph 14(d) of the Petition). Again, under the facts presented in the Petition, the Petitioner's storage location appears to have not satisfied the requirements of a state bonded

warehouse facility. Moreover, the Petitioner, a licensed distributor, cannot lease or rent its storage location or warehouse space to licensed vendors.

22. It is a violation of section 561.42, Florida Statutes, for a licensed distributor to lease storage space to a vendor. Rule 61A-4.018, Florida Administrative Code, provides as follows:

It shall be considered a violation of 561.42, Florida Statutes, for any distributor to rent any property to a licensed vendor or from a licensed vendor if said property is used, in whole or in part as a part of the licensed premises of said vendor or if said property is used in any manner in connection with said vendor's place of business.

CONCLUSION

Based upon the specific facts presented by the Petitioner, and the legal conclusions set forth in full herein,

THE DIVISION HEREBY CONCLUDES:

A. Pursuant to section 561.41, Florida Statutes (1997), "each licensed wine distributor" must have a "principal office" in Florida, and may have as many "branch" offices as it wishes, either within or outside Florida. The principal office and all Florida branch offices must be separately licensed.

B. The determination of whether a wine distributor meets the requirements of section 561.411, Florida Statutes (1997) is based on warehouse space, inventory, and sales at each separately licensed warehouse location of the licensee. Warehouse space, inventory, and sales can not be consolidated or aggregated from multiple warehouse locations in order to satisfy the requirements of section 561.411, Florida Statutes.

C. Pursuant to section 564.02(3)(a), Florida Statutes, wine distributors are required to separately license each warehouse location, or each branch office, within the State of Florida. Furthermore, each such location must satisfy the requirements of section 561.411, Florida Statutes.

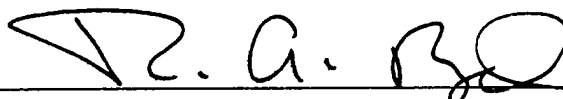
D. A licensed wine distributor's storage location is not a "state bonded warehouse." A distributor's satisfaction of the distributor qualifications in section 561.411, Florida Statutes, does not qualify its storage facility as a "state bonded warehouse." A warehouse facility must satisfy the requirements of section 561.25, Florida Statutes, for it to qualify as a "state bonded warehouse."

E. Under the facts presented in its Petition the

Petitioner's storage warehouse does not qualify as a state bonded warehouse, and may not lease or rent storage space to wine importers or licensed vendors. Furthermore, it would be a violation of section 561.42, Florida Statutes, for a distributor to lease or rent storage space to a licensed vendor.

F. This conclusion is based on the facts described in the Petitioner's Petition for Declaratory Statement, and the particular factual assertions described therein. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change.

DATED this 7 day of JANUARY, 1999.



Richard A. Boyd, Director
Department of Business and
Professional Regulation
Division of Alcoholic Beverages
and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
(904) 488-3227

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH SARAH L. WACHMAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: James S. Mattson, Esquire, Mattson & Tobin, LLP, P.O. Box 586, Key Largo, Florida 33037, this _____ day of _____, 199_____.

Miguel Oxamendi
Chief Assistant General Counsel

FILED

Department of Business and Professional Regulation
AGENCY CLERK

BEFORE THE STATE OF FLORIDA
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

IN RE PETITION OF THE GREAT
HOUSE OF WINE, INC., A FLORIDA
CORPORATION

CLERK *Sarah L. Washburn*

No. _____ DATE 10-13-98

DS 98-033

PETITION FOR DECLARATORY STATEMENT

1. Petitioner is a Florida-licensed distributor of beer and wine, license number BEV-5402312.

2. The Division of Alcoholic Beverages and Tobacco ("Division") is a division of the State of Florida, Department of Business and Professional Regulation ("Department"). Both the Division and the Department are "agencies" of the State of Florida. § 20.03(11), Fla. Stat. (1997).

3. This Petition is filed pursuant to § 120.565, Fla. Stat. (1997), by a substantially affected person (Petitioner), regarding an agency's (the "Division") interpretation of a statutory provision, and rules of the Division.

PETITIONER IS SUBSTANTIALLY ADVERSELY AFFECTED

4. Petitioner is a licensed distributor of beer and wine, with its principal office at 88101 Overseas Highway, Islamorada, Monroe County, Florida 33037. The building in which Petitioner operates is owned by the founding shareholders of The Great House of Wine, Inc.

5. Since receiving its temporary license as a Florida beer and wine distributor on July 2, 1997, Petitioner has taken orders and received payment at its Monroe County Post Office Box and its physical location. During that same period, Petitioner

has received wine at, and shipped wine from, its physical location at 88101 Overseas Highway, Monroe County, Florida.

6. Petitioner sells wine to vendors in several Florida counties. It pays extra freight charges, and endures longer delivery and shipment times, to bring wine into the Florida Keys and ship it back to the mainland, than it would if it stored its inventory on the Florida mainland.

7. In September 1998, Petitioner located a suitable warehouse site in Miami-Dade County, and contacted agency licensing personnel in Miami and Tallahassee to determine whether it could change the location of its place of business to Miami-Dade pursuant to § 561.33(1), Fla. Stat. (1997) (*Licensee moving to new location*). In addition, during September 1998, Petitioner inquired of agency licensing personnel whether Petitioner could continue to maintain its principal office at 88101 Overseas Highway, in Monroe County, pursuant to § 561.41, Fla. Stat. (1997) (*Maintenance and designation of principal office by ... distributors ...*).

8. The Chief Executive Officer (CEO) and Chief Operations Officer (COO) of Petitioner are residents of, and have professional practices (law and architecture/engineering respectively) in, Monroe County. The Vice-President for Operations is a resident of Monroe County. These three officers comprise the entire management of Petitioner. In order to manage the business activities of Petitioner, the President and Secretary-Treasurer believe it is necessary to keep the offices of Petitioner, and

the CEO's and COO's offices, as close to one another as possible.

9. Petitioner was told by telephone, in September 1998, by agency personnel in Miami that both locations (Miami-Dade and Monroe) would have to be licensed as separate distributor locations. A few days later, after Petitioner's counsel brought § 561.411, Fla. Stat., to the attention of the agency's Miami licensing personnel, they agreed (by telephone) that Petitioner could transfer its location to Dade County pursuant to § 561.33, Fla. Stat., while maintaining its "mailing address" at 88101 Overseas Highway, Monroe County.

10. Petitioner's counsel then contacted the agency's Director of Licensing, Barry Schoenfeld, by telephone, at his Tallahassee office, and brought Petitioner's interpretation of §§ 561.33 and 561.41, Fla. Stat., to the Director's attention. Mr. Schoenfeld later contacted Petitioner's counsel on Monday, October 6, 1998, by telephone, and informed Petitioner's counsel that The Great House of Wine, Inc., could not maintain its statutory "principal office" in Monroe County while receiving, storing, and shipping wine at its Dade County location, unless both locations met the requirements of § 561.411, Fla. Stat. (1997), and each location was licensed separately.

11. In accordance with the foregoing statutory interpretations by the agency, Petitioner has decided to apply to move its entire business from Monroe County to Dade County, pursuant to § 561.33, Fla. Stat. (1997). An appointment has been made, with

agency personnel in Miami, to review said application and grant a temporary license on Friday, October 16, 1998.

12. Petitioner is substantially affected by the statutes, rules, and interpretations at issue herein. Petitioner alleges that the statutes and regulations at issue are susceptible of multiple interpretations, and the agency's interpretation is not the most logical or the fairest one. Petitioner is adversely affected because:

- (a) it is concerned about a lack of control over its operations, with its principal (Dade County) office 40 miles away from the offices of its CEO and COO;
- (b) the statutory interpretations provided by agency personnel prevent Petitioner from leasing warehouse space in other parts of Florida ("branch offices under § 561.41, Fla. Stat.), while maintaining a "principal office" in whatever County it chooses;
- (c) Petitioner's employees are discriminated against by these agency policies, in being required to work in an area dangerous to their personal safety. They should not be required to work in warehouse districts such as those in Dade County, Florida, when they could do their work as well in a safe non-warehouse neighborhood; and
- (d) There is no rational basis for requiring a distributor to co-locate its offices with a warehouse. Warehouse districts tend to be of a speedy, noisy, and dirty character, inconsistent with office districts; and
- (e) Monroe County does not have any "warehouse districts," and Monroe County has an absolute moratorium on the construction of any warehouses. The agency interpretations described above make it difficult, if not impossible, for a wine distributor to operate in Monroe County except under very restricted space constraints.

APPLICABLE STATUTES, RULES, OR ORDERS

13. Petitioner avers that Florida Statute sections 561.01(3), 561.14, 561.181, 561.33, 561.41, 561.411, 561.42, 561.54, 562.25, 564.045, and Florida Admin. Rules 61A-1.013, 61A-2.009, and 61A-4.020 may apply to the set of circumstances described within.

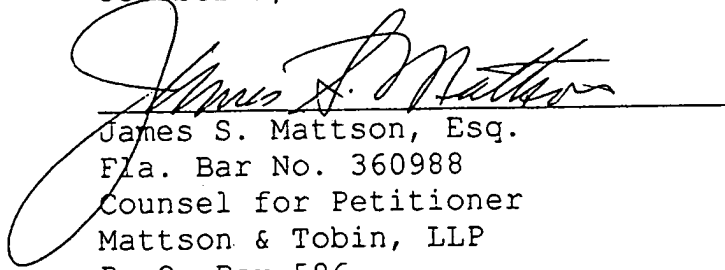
ISSUES PRESENTED FOR DECLARATORY STATEMENT

14. Petitioner presents the following interpretations of the alcoholic beverage laws and regulations of this State, and requests either (a) agency approval of Petitioner's interpretation, or (b) an explanation of the agency's contrary interpretation of the relevant statutes and regulations.

- (a) Pursuant to § 561.41, Fla. Stat. (1997), "each licensed wine distributor" must have a "principal office" somewhere in Florida, and may have as many "branch" offices as it wishes, either within or outside Florida. The principal office and all Florida branch offices operate under a single alcoholic beverage license.
- (b) The determination of whether a wine distributor meets the requirements of § 561.411, Fla. Stat. (1997) is based on the consolidated warehouse space, consolidated inventory, and consolidated sales from all warehouse locations leased by, owned by, or dedicated to the company.
- (c) A wine distributor is not required to separately license each warehouse location, or each branch office, within the State of Florida.
- (d) A warehouse that is licensed as a wine distributor's storage location is a "Florida Bonded Warehouse," without having to separately apply for a Bonded Warehouse license. As a Florida Bonded Warehouse, a wine distributor may store wines owned by Florida licensed importers, or owned by Florida licensed vendors, at any fee agreed to by the parties.

WHEREFORE, Petitioner demands a Declaratory Statement within 90 days after the receipt of this Petition by the Division of Alcoholic Beverages and Tobacco.

Respectfully submitted
October 9, 1998



James S. Mattson, Esq.
Fla. Bar No. 360988
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