

<b>FILED</b>	
Department of Business and Professional Regulation	
AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	10/15/2021
File #	2021-07663

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

IN RE:

DECLARATORY STATEMENT ON BEHALF  
OF FLAGAMI LIQUORS, LLC,

DABT CASE NO.: 2021-030344  
DS: 2021-036

Petitioner.

**DS 2021-036**

**FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT**

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division"), pursuant to section 120.565, Florida Statutes, and rule 28-105.003, Florida Administrative Code, hereby issues this Final Order on the Petition for Declaratory Statement ("Petition") requested on behalf of Flagami Liquors, LLC ("Petitioner").

**ISSUE PRESENTED**

1. Petitioner requests a declaratory statement regarding whether Petitioner, a 3PS quota licensee, subject to the provisions of sections 561.20(1), and 565.02(1)(a), Florida Statutes, is entitled to sell and serve alcoholic beverages for consumption on the premises at a catered event at which prepared food is provided by a caterer licensed under chapter 509, Florida Statutes.

**FINDINGS OF FACT**

2. Petitioner submitted its Petition to the Division on June 25, 2021. A copy of the Petition is attached hereto as **Exhibit A**.

3. On July 2, 2021, the Division published notice of its receipt of the Petition in Volume 47, Number 128 of the Florida Administrative Register.

4. The notice provided that motions to intervene must be filed within 21 days after the date the notice was published. *See* Fla. Admin. Code R., 28-105.0027. No motions to intervene were filed.

5. Petitioner is a Florida Limited Liability Company located at 751-753 NW 37th Avenue, Miami, Florida 33125.

6. Petitioner is the licensee of record for State of Florida Alcoholic Beverage License Number BEV2300843, Series 3PS.

7. Petitioner's license, issued pursuant to the limitation on the number of licenses as specified under section 561.20(1), Florida Statutes, is commonly referred to as a "quota license."

8. Petitioner intends to serve and sell alcoholic beverages for consumption on premises at catered events away from its licensed premises where prepared food is provided by a caterer licensed under chapter 509.

9. Petitioner asserts that when it applies to be the alcoholic beverage caterer at many catered events, local officials and private parties frequently deny its application, stating that the holder of a 3PS quota license is only licensed to sell for off premises consumption. *See* Exhibit A, 4.

10. The conclusion of this Final Order is based on the factual assertions described in the Petition and the facts described herein. All of the facts presented in the Petition were duly considered and form the basis of the Final Order. For the following reasons, the Petition is granted and answered as set forth below.

#### **CONCLUSIONS OF LAW**

11. The Division has jurisdiction over this matter. *See* §§ 120.565, 561.02, 561.08, and 561.11 Fla. Stat. The Division is responsible for the administration, regulation, and

enforcement of chapters 561 through 568, Florida Statutes, commonly referred to as the “Beverage Law.” *See* § 561.02, Fla. Stat.

12. Petitioner has standing to petition for a declaratory statement as a vendor licensed by the Division. *See* § 120.565, Fla. Stat.

13. The caterer license is a special license type added to the Beverage Law, and is commonly referred to as a “13CT license.” *See* ch. 2000-191, §6, at 6, Laws of Fla.

14. Quota license holders are able to serve alcoholic beverages at catered events without the need for additional licensure, as long as the caterer is licensed under chapter 509 and is providing prepared food at the event. Section 561.20(2)(a)5., Florida Statutes, provides, in pertinent part:

...Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law.... (Emphasis added)

15. Petitioner’s alcoholic beverage license is governed by section 565.02(1)(a), Florida Statutes, which provides, in pertinent part:

(1) The following state license taxes apply to vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content:

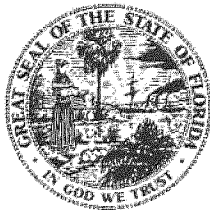
(a) A vendor operating a place of business where beverages are sold only in sealed containers for consumption off the premises where sold shall pay an amount equal to 75 percent of the amount of the license tax for vendors in the same county as provided in paragraphs (b), (c), (d), (e), and (f).

16. Therefore, while Petitioner's 3PS quota license allows for package sales for off-premises consumption only, Petitioner meets the caterer exception provided under section 561.20(2)(a)5., Florida Statutes, which allows Petitioner to serve or sell alcoholic beverages for consumption on the premises at a catered event at which prepared food is provided by a caterer licensed under chapter 509, Florida Statutes, without additional licensure.

### **CONCLUSION**

Having considered the facts and circumstances set forth in the Petition, it is ORDERED that the Division hereby GRANTS Petitioner's Petition for Declaratory Statement and answers as set forth above. These conclusions have no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change, or in the event the law or rules pertinent to Petitioner's petition are modified in the future.

**DONE** and **ORDERED** in Tallahassee, Florida on this 11<sup>th</sup> day of September, 2021.



*R. Sterling Whisenhunt*  
R. Sterling Whisenhunt, Director  
Division of Alcoholic Beverages and Tobacco

Julie I. Brown, Secretary

Ron DeSantis, Governor

## MEMORANDUM

TO: Daniel McGinn, Deputy Director,  
Division of Alcoholic Beverages & Tobacco

FROM: Sterling Whisenhunt, Director,   
Division of Alcoholic Beverages & Tobacco

SUBJECT: Delegation of Authority

DATE: September 22, 2021

I, Sterling Whisenhunt, hereby delegate to Daniel McGinn, Deputy Director, signature authority in my absence for the dates of October 11, 2021 through October 25, 2021.

All documents signed on my behalf should have a copy of this Delegation of Authority attached.

SW/sw

**NOTICE OF RIGHT TO APPEAL UNLESS WAIVED**

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and section 120.68, Florida Statutes.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished to counsel for Petitioner as listed below, on this 15<sup>th</sup> day of October 2021.

Samuel A. Rubert, Esq.  
Samuel A. Rubert, P.A.  
2645 Executive Park Drive, Suite 122  
Weston, FL 33331  
[srubert@rubertlaw.com](mailto:srubert@rubertlaw.com)

  
**RONDA BRYAN, AGENCY CLERK**  
Department of Business & Professional Regulation

**Copies furnished to:**

R. Sterling Whisenhunt, Director  
David Axelman, General Counsel  
Ross Marshman, Deputy General Counsel  
Megan Kachur, Chief Attorney

<b>FILED</b>	
Department of Business and Professional Regulation	
Senior Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/25/2021
File #	

**DBPR Agency Clerk  
Division of Alcoholic Beverages & Tobacco  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2202  
Email: AGCfiling@dbpr.state.fl.us**

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**PETITION FOR DECLARATORY STATEMENT  
BEFORE THE FLORIDA DIVISION OF ALCOHOLIC BEVERAGES AND  
TOBACCO**

Petitioner, Flagami Liquors, LLC, hereby requests a declaratory statement from the Florida Division of Alcoholic Beverages and Tobacco, and states:

**Petitioner's Name and Address:**

Name: FLAGAMI LIQUORS, LLC

Address: 751-753 NW 37<sup>th</sup> Avenue  
Miami, Florida 33125

Telephone: (305) 804-5141

Email: srubert@rubertlaw.com

**DS 2021-036**

**Petitioner's Attorney's Name and Address:**

Name: Samuel A. Rubert

Address: Samuel A. Rubert, P.A.  
2645 Executive Park Drive, Suite 122  
Weston, Florida 33331

Telephone: (954) 640-0297

Facsimile: (888) 344-1798

Email: srubert@rubertlaw.com



**STATUTORY PROVISIONS, AGENCY RULE(S), OR AGENCY ORDER(S) ON  
WHICH THE DECLARATORY STATEMENT IS SOUGHT**

**561.20(1)      Limitation upon number of licenses issued. —**

No license under s. 565.02(1)(a)-(f), inclusive, shall be issued so that the number of such licenses within the limits of the territory of any county exceeds one such license to each 7,500 residents within such county. Regardless of the number of quota licenses issued prior to October 1, 2000, on and after that date, a new license under s. 565.02(1)(a)-(f), inclusive, shall be issued for each population increase of 7,500 residents above the number of residents who resided in the county according to the April 1, 1999, Florida Estimate of Population as published by the Bureau of Economic and Business Research at the University of Florida, and thereafter, based on the last regular population estimate prepared pursuant to s. 186.901, for such county. Such population estimates shall be the basis for annual license issuance regardless of any local acts to the contrary. However, such limitation shall not prohibit the issuance of at least three licenses in any county that may approve the sale of intoxicating liquors in such county. (emphasis added).

**561.20(2)(a)(5) Limitation upon number of licenses issued. —**

Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. **Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer**



**licensed under chapter 509.** If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; (emphasis added).

**565.02(1) License fees; vendors; clubs; caterers; and others. —**

(1) The following state license taxes apply to vendors who are permitted to sell any alcoholic beverages regardless of alcoholic content:

(a) **A vendor operating a place of business where beverages are sold only in sealed containers for consumption off the premises where sold shall pay an amount equal to 75 percent of the amount of the license tax for vendors in the same county as provided in paragraphs (b), (c), (d), (e), and (f).**

(b) A vendor operating a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, for such county, shall pay \$1,820. (emphasis added).

**DESCRIPTION OF HOW THE STATUTES AND AGENCY RULES MAY  
SUBSTANTIALLY AFFECT THE PETITIONER IN THE PETITIONER'S  
PARTICULAR SET OF CIRCUMSTANCES**

Petitioner, Flagami Liquors, LLC ("Flagami") is the holder of quota alcoholic beverage license no.: BEV2300843, 3PS, and intends to serve and sell alcoholic beverages for consumption on premises at catered events off its licensed premises where prepared food is provided by a caterer licensed under chapter 509. Fla. Stat. §561.20(2)(a)(5) provides that *any* vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may do so. Flagami's quota license is issued pursuant to Fla. Stat. §565.02(1), subsection (a) to be specific, and is one of the quota licenses issued within the limits of Fla. Stat. §561.20(1). Flagami therefore believes it is legally entitled to act as it intends.

However, when Flagami applies to be the alcoholic beverage caterer at many catered events, local bureaucrats and private parties frequently deny their application stating that the holder of a 3PS quota alcoholic beverage license is licensed *only* to sell alcoholic beverages for consumption off premises, and therefore that Flagami cannot sell alcoholic beverages for consumption on premises at a catered event. Making matters worse, when these contracting parties contact the Division of Alcoholic Beverages and Tobacco ("DABT") for clarification, which they often do, they have been told repeatedly that the catering exception provided in Fla. Stat. §561.20(2)(a)(5) only applies to holders of quota licenses which allow consumption on premises – those issued under Fla. Stat. §565.02(1)(b-f). The result is that Flagami is unclear on its rights concerning selling and serving alcoholic beverages for consumption on premises at catered events.

Wherefore, Flagami respectfully requests DABT clarify whether it, as a holder of 3PS quota license issued pursuant to Fla. Stat. §§561.20(1) and 565.02(1)(a), is entitled to sell and serve alcoholic beverages for consumption on premises at catered events where prepared food is provided by a caterer licensed under chapter 509.

Respectfully submitted this 24th day of June, 2021,

**SAMUEL A. RUBERT, P.A.**

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By: 

Samuel A. Rubert

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