

**FILED**

Dept. of Business and Professional Regulation

**AGENCY CLERK**

Sarah Wachman, Agency Clerk

By: Brandon A. Moore

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

**IN RE:      PETITION FOR DECLARATORY STATEMENT,  
             ON BEHALF OF SALVATORE A. ITALIANO**

**Petitioner.**

**DS NO.**

**DECLARATORY STATEMENT**

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco, (hereinafter the Division) pursuant to Section 120.565, Florida Statutes. The Petitioner, SALVATORE A. ITALIANO, has filed a Petition for Declaratory Statement, which asks whether his proposed development and ownership of a hotel complex will violate Section 561.42, Florida Statutes, Tied House Evil Law.

**FINDINGS OF FACT**

1. On or about June 20, 1995, the Division received a Petition for Declaratory Statement filed by SALVATORE A. ITALIANO. The Division renders its Findings of Fact on the basis of the information contained in paragraphs 4 through 8 of the Petition, which have been set forth in full hereinbelow as paragraphs 2 through 6.

2. Petitioner owns fifty percent of the voting stock of two corporations, each of which is licensed as a beer wholesaler in Florida pursuant to the licensing provisions of Chapter 561, Florida Statutes. The names of the two corporations are Anthony

Distributors, Inc, (operating in Tampa, Florida) and Anthony Distributing Company, Inc. ( operating in Pinellas County, Florida). The remaining fifty percent of the voting shares of both of the above referred to companies are owned by Anthony S. Italiano, Petitioner's father.

3. Petitioner desires to develop a hotel complex ("the Complex") in the state of Florida including one or more restaurants and bars in which alcoholic beverages will be sold. This complex would also include a parking garage and various retail shops. All portions of the Complex would be interconnected by a series of bridges and walkways.

4. The Complex would be constructed on property no part of which will be owned by a manufacturer or distributor of alcoholic beverages licensed under Chapter 561, Florida Statutes.

5. The Complex would be owned by Petitioner or by a corporation or other legal entity controlled by Petitioner but which is not licensed as a manufacturer or distributor under Chapter 561, Florida Statutes.

6. The owner of the Complex would not engage in the retail sale of alcoholic beverages in the Complex. Instead, the owner of the Complex would enter into contracts with one or more independent concessionaires not owned or controlled by a manufacturer or distributor of alcoholic beverages licensed under Chapter 561, Florida Statutes, who would sell alcoholic beverages to patrons of the restaurants and bars within the Complex. The concessionaire <sup>1</sup>

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<sup>1</sup> Pursuant to a telephone conversation with Petitioner's legal counsel, additional conditions will be imposed upon the Complex:  
(1) The concessionaire must operate in a defined licensed premises,

or concessionaires would be compensated for their services by the owner of the Complex in a manner which does not vary in accordance with the amount of alcoholic beverage sales the concessionaires make within the Complex.

#### CONCLUSIONS OF LAW

7. The Division has jurisdiction over this matter pursuant to Sections 120.565, 561.02 and 561.42, Florida Statutes.

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

9. Section 561.42(1), Florida Statutes, states in pertinent part as follows:

... No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property or property of any description ... (Emphasis supplied.)

10. Rule 61A-4.018, Florida Administrative Code, states:

It shall be considered a violation of section 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 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. (Emphasis supplied.)

11. The basic purpose of the "Tied House Evil" statute is to divorce manufacturing-distributing activities of the liquor

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within the Complex; (2) The Complex may not compensate the concessionaire; and (3) The Complex' receipt of rents for use of the licensed premises may include a percentage of the profits from the concessionaire, without creating a partnership. (See Section 620.59(4), Fla. Stat.)

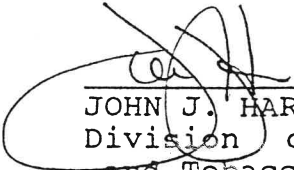
business from that of retailers. Mayhue's Super Liquor Store, Inc. v Meiklejohn, 596 F.2d 638 (5th Cir. 1970). Likewise, the statute was enacted to prevent distributors from having a financial interest in or controlling retail outlets. Central Florida Distributing Co. v Jackson, 324 So.2d 143 (Fla. 1st DCA 1975), Musleh v Fulton Distributing Co. of Fla., 254 So.2d 815 (Fla. 1st DCA 1971).

12. The Petitioner Complex, a separate legal entity, is neither manufacturer nor distributor. Hence, it does not have a direct interest in and is not prohibited from leasing space to an independent retail concessionaire. The issue which therefore remains, is whether Petitioner Complex, by virtue of Mr. Italiano's ownership, will have an indirect financial interest in or be able to exert control over the retail concessionaires. The Division concludes that will not.

13. Based upon the facts presented by the Petition, the Division concurs with Petitioner that the proposed Complex-Concessionaire arrangement would not violate Florida's Tied House Evil Law, provided however, that:

- a. Neither Petitioner, the beer distributorships in which he has an ownership interest, nor the Complex shall in any way exert control over a concessionaire in determining which brands of alcoholic beverages will be sold at the concession.

DATED this 21<sup>st</sup> day of September, 1995.

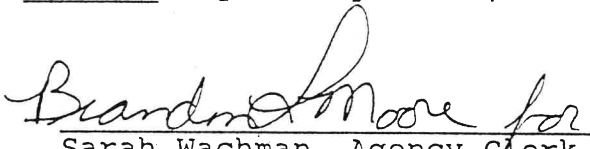
  
JOHN J. HARRIS, DIRECTOR  
Division of Alcoholic Beverages  
and Tobacco  
1940 North Monroe Street  
Tallahassee, Florida 32399-1020  
(904) 488-3227

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 LOIS WILLIAMS, CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 39 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 Salvatore A Italiano, 4912 Bay Way Place, Tampa, FL 33629 and James D. Beasley, Esquire, P.O. Box 391, Tallahassee, FL 32302, this 22nd day of September, 1995.

  
Sarah Wachman, Agency Clerk

Copies furnished to:

Thomas A. Klein  
Legal G

A:ITALIANO.DCL

FILED

Department of Business and Professional Regulation  
DEPUTY CLERK

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

CLERK *Brandon J. Moore*

DATE 6-20-95

In re: Petition of Salvatore )  
A. Italiano. )  
\_\_\_\_\_ )

PETITION FOR DECLARATORY STATEMENT

Petitioner, Salvatore A. Italiano (hereinafter "Petitioner"), petitions the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("the Division") for a declaratory statement setting out the Division's opinion as to the applicability of certain below-described provisions of the Beverage Law and related rules of the Division as it applies to Petitioner in his particular set of circumstances only. In support thereof, Petitioner says:

1. The exact name and address of the Petitioner are as follows:

Salvatore A. Italiano  
4912 Bay Way Place  
Tampa, FL 33629

2. Copies of all pleadings, notices, orders and other papers filed in this proceeding should be sent to the following persons:

Salvatore A. Italiano  
4912 Bay Way Place  
Tampa, FL 33629

James D. Beasley  
Macfarlane Ausley Ferguson  
& McMullen  
Post Office Box 391  
Tallahassee, FL 32302

3. This petition is submitted pursuant to Section 120.565, Florida Statutes, for the purpose of obtaining the Division's opinion regarding the consistency of action proposed to be taken by

Petitioner with certain provisions of the Beverage Law and of the rules of the Division.

Facts Pertaining to Petitioner's Proposed Development

4. Petitioner owns fifty percent of the voting stock of two corporations, each of which is licensed as a beer wholesaler in Florida pursuant to the licensing provisions of Chapter 561, Florida Statutes. The names of the two corporations are Anthony Distributors, Inc. (operating in Tampa, Florida) and Anthony Distributing Company, Inc. (operating in Pinellas County, Florida). The remaining fifty percent of the voting shares of both of the above referred to companies are owned by Anthony S. Italiano, Petitioner's father.

5. Petitioner desires to develop a hotel complex ("the Complex") in the state of Florida including one or more restaurants and bars in which alcoholic beverages will be sold. This complex would also include a parking garage and various retail shops. All portions of the Complex would be interconnected by a series of bridges and walkways.

6. The Complex would be constructed on property no part of which will be owned by a manufacturer or distributor of alcoholic beverages licensed under Chapter 561, Florida Statutes.

7. The Complex would be owned by Petitioner or by a corporation or other legal entity controlled by Petitioner but which is not licensed as a manufacturer or distributor under Chapter 561, Florida Statutes.

8. The owner of the Complex would not engage in the retail sale of alcoholic beverages in the Complex. Instead, the owner of the Complex would enter into contracts with one or more independent concessionaires not owned or controlled by a manufacturer or distributor of alcoholic beverages licensed under Chapter 561, Florida Statutes. The concessionaire or concessionaires would be duly licensed vendors pursuant to Chapter 561, Florida Statutes, and would sell alcoholic beverages to patrons of the restaurants and bars within the Complex. The concessionaire or concessionaires would be compensated for their services by the owner of the Complex in a manner which does not vary in accordance with the amount of alcoholic beverage sales the concessionaires make within the Complex.

Status and Rules Upon Which Declaratory Statement is Sought

9. Petitioner is fully aware of the provisions of Section 561.42, Florida Statutes, commonly referred to as the Tied House Evil Law. Petitioner fully supports the three-tier system of alcoholic beverage distribution and does not desire to contravene the purpose or intent of that law. However, Petitioner does not believe that his involvement in the Complex development and ownership as described above would violate the Tied House Evil Law or the Division's rules implementing that law. In particular, petitioner is aware of the provisions of Rule 61A-4.018, Florida Administrative Code, concerning the rental of property by a distributor to a licensed vendor.



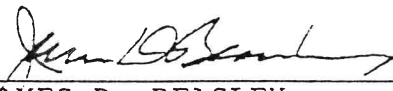
Declaratory Statement Sought

10. Petitioner seeks a Division opinion concurring that no aspect of the development and ownership of the Complex, if carried out in the manner described above, will violate the Tied House Evil Law or any Division rule implementing same, including Rule 61A-4.018, Florida Administrative Code.

WHEREFORE, Petitioner respectfully requests the Division to issue its declaratory statement that the transactions described in the body of this petition for the development and ownership of the Complex will be consistent with the provisions of Section 561.42, Florida Statutes, and the rules of the Division implementing such statute including, but not limited to, Rule 61A-4.018, Florida Administrative Code and, specifically, that petitioner's ownership or control of any legal entity owning the Complex will not contravene such statute or rules.

DATED this 20<sup>th</sup> day of June, 1995.

Respectfully submitted,

  
\_\_\_\_\_  
JAMES D. BEASLEY  
Macfarlane Ausley Ferguson & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
(904) 224-9115

ATTORNEY FOR PETITIONER