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

IN RE:

PETITION FOR DECLARATORY STATEMENT, on behalf of BASS PLC,

Petitioner.

__________________________________________/

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco, ("DIVISION") pursuant to section 120.565, Florida Statutes. The Petitioner, BASS PLC, has filed a Petition for Declaratory Statement, containing a statement of facts, a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement with appendix is attached hereto and incorporated by references.

ISSUE PRESENTED

The Petitioner presents the following issue to the Division:

Whether §§ 561.22 and 561.42(1), Florida Statutes, prohibit the proposed business arrangement described in the Petitioner's Petition for Declaratory Statement?

FINDINGS OF FACT

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1. On or about April 21, 1998, BASS PLC 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 Petitioners' Petition for Declaratory Statement and its Appendix (hereinafter "the Petition"), 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 as stated in the Petition for Declaratory Statement are as follows:

Bass is a major multinational enterprise which is engaged through subsidiary companies in a variety of businesses, including alcoholic beverage and soft drink production, hotels, and leisure retail (e.g. taverns, betting and gaming establishments). Bass is a United Kingdom holding company which is headquartered in London, England. Bass is a public company. Its stock is traded on the London Stock Exchange and on the New York Stock Exchange. As of December 1997, Bass was the 26th largest public limited company in the United Kingdom on the basis of market capitalization.

Bass does not engage in the manufacture or sale of alcoholic beverages. Each of its operating subsidiaries conducts business independent of Bass and independent of
each other. With the recently announced acquisition of the Intercontinental Hotel chain, the primary business of Bass is the ownership, operation and franchise of hotels worldwide. A subsidiary of Bass, Bass Brewers, Ltd. ("BBL") is a manufacturer of beer products. Bass, through a wholly owned subsidiary other than BBL, intends to acquire upscale hotels in Florida. These hotels will engage in the sale of alcoholic beverages at retail.

Attached as Appendix 1 is a "Basic Ownership Chart" reflecting the ownership structure of Bass and its subsidiaries. As can be seen from the Chart, the alcoholic beverage manufacturing business is operated totally separate and apart and independent of the hotel and other operations of Bass. The subsidiaries of Bass involved in the manufacturing of alcoholic beverages are indicated on the left side of the chart. Those subsidiaries directly involved in the manufacturing of alcoholic beverages are identified as the Brewing Unit. The left side of the chart reflects that Bass Investments Limited and Bass Overseas Holding Ltd. are wholly owned subsidiaries of Bass. Bass Holdings Ltd. is a wholly owned subsidiary of Bass Investments Limited. BBL is a wholly owned subsidiary of Bass Investments Limited. BBL in turn owns Bass Beers Worldwide, Ltd. Bass Beers Americas is a wholly owned subsidiary of Bass Beers Worldwide Ltd. and so on.

The subsidiaries of Bass involved in the hotel business are identified on the right side of the chart. Each subsidiary identified on the hotel side of the chart is wholly owned by the preceding subsidiary, and each subsidiary is operated independently of the other subsidiaries. Each subsidiary has been created for a specific business purpose or function. No subsidiary in the Brewing Unit on the chart has any officer in common with any subsidiary in the Hotel Unit, nor is any member of the Board of Directors of any corporation in the Brewing Unit a member of the Board of Directors of any corporation in the Hotel Unit. Accordingly, each corporation in the Brewing Unit operates independently of each corporation in the Hotel Unit. No corporation, or director or officer of any corporation, in the Brewing
Unit influences the operations of, or is involved with, any corporation in the Hotel Unit.

A. Bass' Hotel Operations

Bass has been involved in the hotel industry for many years. Until the late 1980's it owned and operated the Crest Hotel chain in Europe and the Middle East and also owned Bass Horizons hotels which operated resort hotels in Spain and the Mediterranean. In 1988, Bass acquired ownership of a majority of the assets of Holiday Inns outside North America, including international rights to the Holiday Inn trademark. That same year it acquired ownership of thirteen (13) Holiday Inn hotels in the United States. In 1990, it acquired the remainder of the Holiday Inn hotel chain for approximately 2.3 billion dollars.

The Bass hotels are owned and operated by the Bass subsidiary Holiday Hospitality Corporation ("HHC"). HHC, through its subsidiaries and affiliates, own, operate and franchise more than 2,380 hotels with approximately 392,000 guest rooms in more than 60 countries. In March of 1998, Bass acquired the Inter-Continental Hotel chain for approximately 3 billion dollars. There are 161 Inter-Continental Hotels owned and operated worldwide, with a total of approximately 60,000 guestrooms. Approximately eighty percent (80%) of all hotels owned by Bass are located in the United States. The hotels are operated under a variety of brand names, including Crowne Plaza, Holiday Inn, Holiday Inn Select, Holiday Inn Express and Inter-Continental. HHC does not presently own or operate any hotel in the State of Florida other than the recently acquired Intercontinental Hotel in Miami, Florida. However, previously and for a brief time, HHC did own and operate seven Holiday Inns in Florida (See Appendix 2). Each hotel was granted an alcoholic beverage license by the Division. It was the policy of the Division at that time that §561.22 and §561.42 did not apply to foreign alcoholic beverage
manufacturers.¹ (See Appendix 3—the Intercontinental Hotel in Miami held an alcoholic beverage vendor license under this policy). Bristol Hotel Company subsequently acquired these hotels.

Bristol Hotel Company ("Bristol"), is a publicly-owned Texas corporation headquartered in Dallas. Bristol owns and operates hotels throughout the United States under the Bristol Suites, Harvey Hotel and Harvey Suites brand names. In 1997, Bristol acquired ownership of 60 Holiday Inn hotels in North America, including the Florida hotels owned by HHC. In consideration for the acquisition, Bristol issued approximately 32% of its outstanding shares of stock to two subsidiaries of Bass, Bass America, Inc., and Holiday Corporation, which own 23.5% and 8.5% respectively, of Bristol's stock. Pursuant to the Universal Studio and Sega Declaratory Statements such stock ownership is not prohibited and does not adversely affect the Bristol alcoholic beverage vendor license and would not preclude subsidiaries of Bass from holding alcoholic beverage licenses. Holiday Inns Franchising, Inc. ("HIFI"), a wholly-owned subsidiary of Bass (USA) Franchising, Inc., licenses the HHC trademarks to franchisees for use with respect to the ownership and operation of hotels in the United States, which hotels hold retail alcoholic beverage licenses.

HHC sets quality standards for all of its hotel brands and operates a sophisticated customer satisfaction and quality measurement system to insure those standards are met or exceeded. For example, in 1994, HHC launched an initiative to modernize the North American, full-service portion of its hotel portfolio, with franchisees investing more than one billion dollars in the renovation and upgrading of their properties. In addition, as of September 30, 1997 there were franchise agreements for 658 hotels with approximately 71,000 rooms that remained to be constructed and integrated into the HHC hotel

¹The Division subsequently rescinded its policy of not applying §561.22 and §561.42 to foreign manufacturers. (Footnote is in the original).
system. The construction, conversion and development of hotels is dependent upon a number of factors, including franchisees obtaining suitable financing at acceptable interest rates.

Because conventional financing institutions are sometimes reluctant to extend financing to franchisees to construct, renovate, furnish and equip hotels, it has become customary for hotel franchisors to extend financing to franchisees in the form of loans and leases of furniture, fixtures and equipment upon competitive terms and rates. General Innkeeping Acceptance Corporation ("GIAC"), a wholly owned subsidiary of HHC, and GIAC Leasing Corp. ("GIAC Leasing"), a wholly-owned subsidiary of GIAC, are engaged in the leasing and financing of the purchase of hotel furniture and fixtures by franchisees of HIFI. GIAC also provides real estate mortgage financing to various HIFI franchisees in connection with construction, permanent refinancing and other loans regarding new and existing hotel properties. These transactions are bonafide, arms-length transactions, consistent with custom and practice in the hotel-financing industry, and are not in any way, directly or indirectly, related to the purchase or sale of alcoholic beverages.

In addition, HIFI, in the normal course of its business, may defer the payment of franchise application fees as well as other royalty and system fees and will accept instruments evidencing such deferral. These deferrals are customary commercial transactions related to the franchise industry and are not in anyway associated with the distribution or sale of any alcoholic beverage products.

B. Bass' Brewing/Distribution Operations

Bass has been engaged in the brewing business for many years through BBL, which presently operates eight (8) breweries in the United Kingdom, producing over sixty (60) brands of beer. Bass Ale is sold worldwide by Bass Beers Worldwide Ltd. ("BBW"), which handles the export of all BBL brands. Through another subsidiary, Bass owns an
equity interest in breweries located in the Czech Republic and China.

Until 1997, Bass Ale was the only brand produced by BBL and sold in the United States. The brand has been, and is currently, imported into the United States by Guinness Import Company, an independent company, unrelated to Bass, which sells the brand to licensed wholesalers throughout the United States, including Florida wholesalers. In 1997, Bass Beers Americas, headquartered in Atlanta, was formed to sell Hooper's Hooch alcohol lemon drink, another BBL brand, to licensed wholesalers throughout the United States. This brand is presently sold in the State of Florida. As reflected on the attached Basic Ownership Chart, BBL is not a part of the corporate chain of ownership on the hotel side of the Bass businesses and the corporations owning and operating the hotels are not, in any way, owned, controlled or connected to BBL, except very remotely through Bass. No subsidiary of Bass, except BBL, holds an alcoholic beverage license or engages in the sale or distribution of alcoholic beverages.

No BBL alcoholic beverage product will be sold in any hotel acquired by Bass or its subsidiaries in the State of Florida.
(Emphasis in original)

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 have 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 Section 561.22 and Section 561.42, Fla. Stat. 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 presented facts raise the issue of whether the proposed business relationship between a vendor and a manufacturer is violative of the Beverage Law, specifically whether the prohibitions and limitations in section 561.22 and sections 561.42(1), Florida Statutes, would prohibit the proposed relationship.
10. Section 561.22(1), Fla. Stat., states in pertinent part that a "...a license or registration may not be issued to a manufacturer, distributor or exporter as a vendor, ..." Section 561.22(2)(b), Florida Statutes, further provides as follows:

If any applicant for a vendor's license or renewal thereof is a copartnership such copartnership is within the provisions of subsection (1) if any member of the copartnership is interested or connected, directly or indirectly, with any corporation which is engaged, directly or indirectly, or through any subsidiary or affiliate corporation, including any stock ownership asset forth in subsection (3) in manufacturing, distributing, or exporting alcoholic beverages under license or registration of this state or any state of the United States.

11. Section 561.22(3), Florida Statutes, further provides as follows:

If any applicant for a vendor's license ... is a corporation, such corporation is within the provisions of subsection (1) if such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, distributing, or exporting alcoholic beverages ... or if such applicant corporation is controlled by or the majority stock therein owned by another corporation, which latter corporation owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing, distributing, or exporting alcoholic beverages under a license or registration in this state or any other state in the United States.

12. Under Section 561.22(3), Florida Statutes, a prohibited
connection or affiliation would exist between an applicant for a vendor's license and a manufacturer of alcoholic beverages because of stock ownership, or if applicant is controlled by the manufacturer through stock ownership, or if the applicant is owned by another corporation or entity, which latter corporation or entity owns or controls in any way the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly in manufacturing of alcoholic beverages.

13. 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.

14. State and federal courts construing Florida's "tied-house evil" provisions have provided guidance as to the intent and application of these statutory provisions. The overall intent underlying the enactment of section 561.42 (the "tied-house evil" statute) and section 561.22 was to divorce the manufacturing and distributing activities of the liquor business from that of retailers/vendors. Mayhue's Super Liquor Store, Inc. v Meiklejohn, 426 F.2d 142 (5th Cir. 1970). Likewise, the statute was enacted to
prevent distributors from having a financial interest in vendor’s businesses or from controlling the 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).

15. In *Pickerill v. Schott*, 55 So.2d 716 ( Fla. 1951), the Florida Supreme Court stated that “tied house evil” statutes are aimed at preventing the integration of retail and wholesale outlets and to remove the retail dealer of intoxicating liquors from financial or business obligations to the wholesaler, with the exception of ordinary commercial credit for liquors sold. The court traced the history of the tied-house evil provisions and concluded that the purpose of the act was to prevent monopoly or control by manufacturers or distributors of the retail outlets for the sale of intoxicating liquors.

16. In *Central Florida Distributing Co. v. Jackson*, 324 So.2d 143 ( Fla. 1st DCA 1976), the court stated that the purpose of section 561.42 is to prohibit any financial obligation between a distributor and a vendor, thus preventing the control of retail outlets by the distributor. When again confronted with construing and applying the provisions of Florida's tied-house evil law, the First District Court of Appeal in *Musleh v. Fulton Distributing Co.*
of Florida, 254 So.2d 815(Fla. 1st DCA 1971), determined that the purpose of the tied-house evil law was to prohibit manufacturers, wholesalers and distributors of alcoholic beverages from controlling retail outlets operated by licensed vendors through the granting, withholding or extension of credit.

17. Other states, construing similar tied-house evil provisions, have likewise concluded that the purpose of the tied-house evil provisions is to prevent a manufacturer from owning and controlling a retail outlet and gaining some advantage or control in the industry, and to likewise prohibit any influence or control by the manufacturer in the management and operation of a distributor. See for example Bohemian Breweries v. Koehler, 332 P.2d 875 (S.Ct.Idaho, 1958); Joseph Schlitz Brewing Co. v. Central Beverage Co., Inc., 359 N.W. 2d 566 (Court of Appeals, Ind. 1977); and Wine and Spirits Merchandisers, Inc. v. Illinois Liquor Control Commission, 432 N.E. 2d. 1013 (Ill.1982). Influence or control by the distributor in the management and operation of a retailer has also been prohibited. Markstein Distributing Company v. Rice, 135 Cal. RPTR. 255 (1976).

18. The case of State ex rel. Continental Distilling Sales Co. v. Vocale, 27 So.2d 728 (Fla. 1946), is directly analogous to the facts presented by the Petitioner. Continental Distilling
Corporation was a manufacturer of liquors and Continental Distilling Sales Co. was a wholesaler (distributor). In Continental Distilling Sales Co., Continental Distilling Corporation and Continental Distilling Sales Co. brought an action against the Director of the Beverage Division to compel the issuance of a license as a wholesale distributor of liquor Continental Distilling Sales Co. Both companies were owned by a common parent corporation that acted as a holding company that could directly control the affairs of each subsidiary. The court refused to apply the subject statute, the current section 561.22, to prohibit the licensure of Continental Distilling Sales Co. as a wholesaler. The Court ruled that corporations were legal entities by fiction of law and that there was no evidence that the corporations had been formed for the purpose of evading the statute. As a result, the beverage director was required to issue a wholesale distributor license to Continental Distilling Sales Co., regardless of its affiliation with a manufacturer arising from the manufacturer's and distributor's status as wholly owned subsidiaries of the same corporation.

19. Under the facts as stated in the Petition, BASS PLC's purchase of a hotel licensed under the beverage law does not require or involve BASS PLC's control of the management or
operation of a retail alcoholic beverage vendor. BASS PLC will not control the decisions of the vendor regarding the sale of alcoholic beverages, or control the decisions of the vendor as to the alcoholic beverage products it will sell, serve, or promote. Furthermore, the other subsidiaries of Petitioner directly involved in the alcoholic beverages industry, including the manufacturer Bass Brewers, LTD. (collectively referenced as "the Brewing Unit"), and will likewise not exercise any control of the management or operation of the vendor hotels. It further appears that Holiday Hospitality Corporation through its subsidiaries and affiliates, and its associated hotel unit corporations (collectively referenced as "the Hotel Unit") will independently operate and manage the vendor hotels. The Hotel Unit will make its own independent decisions, and Bass PLC and the Brewing Unit will not be involved in the decisions of the Hotel Unit with respect to the sale of alcoholic beverages, including those manufactured by the Brewing Unit. The Hotel Unit's affiliation with the Brewing Unit will be remote. Therefore, the relationships among and between BASS PLC, the Brewing Unit, and the Hotel Unit are not violative of the provisions of Section 561.22, Florida Statutes.

20. As indicated by the facts presented in the Petition, the proposed relationship is arguably as remote and lawful as the
ownership interest in Continental Distilling Sales Co. v. Vocelle. Such an interest would not violate sections 561.22 and 561.42(1), Florida Statutes.

21. The proposed relationship appears not to be done in such a manner as to create an impermissible financial or business obligation from the vendor to the manufacturer. The facts presented in the Petition, establish that the Hotel Unit will independently manage and control the hotel vendors and that the hotel vendors are under no obligation to promote or give preference to Brewing Unit’s products or to exclude any non-Brewing Unit products in the operation of its hotels.

22. The following caveat must be presented. As decided in this Declaratory Statement, there is no inherent Tied House Evil violation in the facts presented. However, care must be taken in practice to prevent any influence by BASS PLC or the Brewing Unit in the management and operation of the Hotel Unit’s vendor businesses. The vendor must also avoid any practice that would indicate an obligation to act on behalf of the manufacturer. For example, the Hotel Unit should avoid giving any preference to Brewing Unit’s products or excluding non-Brewing Unit products in the operation of its vendor hotels. Failure to do so would be indicative of a violation of section 561.42, Florida Statutes.
23. The conclusions made in this Declaratory Statement are compelled by the case law from the Florida courts, Federal courts, and the courts of other states, interpreting and applying sections 561.42, 561.22, and other Tied House Evil Laws. Nothing in this Declaratory Statement or the law upon which it is based is intended to effect or relate to the legality of any other interest, either direct or indirect, which may be prohibited under the Beverage Law, and is further limited to the facts presented in the Petition.

CONCLUSION

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

THE DIVISION HEREBY CONCLUDES:

A. That sections 561.22 and 561.42, Florida Statutes, do not prohibit BASS PLC's subsidiary Hospitality Corporation, through its subsidiaries and affiliates, to own, operate and franchise alcoholic beverage licensed hotels in the State of Florida; and

B. That this conclusion is based on the facts
described in the Petitioners' Petition for Declaratory Statement, including the Appendix, 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 15 day of July, 1998.

Richard A. Boyd, 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 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: J. RILEY DAVIS, Esquire, KATZ, KUTTER, HAIGLER, ALDERMAN, BRYANT & YON, P.A., 106 E.COLLEGE AVE., STE. 1200, TALLAHASSEE, FLORIDA 32301; WILLIAM B. SCHREIBER, Esquire, WORMSER, KIELY, GALEF & JACOBS LLP, 711 THIRD AVENUE, NEW YORK, NEW YORK 10017; and BARRY R. DAVIDSON, Esquire, COLL, DAVIDSON, CARTER, SMITH, SALTER & BARKETT, 3200 MIAMI CENTER, 201 SOUTH BISCAYNE BOULEVARD, MIAMI, FLORIDA 33131-2312, this 15th day of July, 1998.

Miguel Ocampos
Assistant General Counsel
PETITION FOR DECLARATORY STATEMENT

COMES NOW Bass PLC ("Bass") and petitions the State of Florida, Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division") for the rendition of a declaratory statement regarding the applicability of Sections 561.22 and 561.42(1), Florida Statutes, to the facts and circumstances enumerated herein.

In considering this petition, the declaratory statements rendered by the Division pursuant to petitions for declaratory statement filed by Universal City Florida Partners (Universal Studios Florida) and Joseph E. Seagram & Sons, Inc., (Declaratory Statements Rendered 4-8-96 - Final Order No. DPR-96-01977) and Sega Gameworks L.L.C. (Final Order No.BPR-97-03610 rendered 4-17-97) should be consulted. The reasoning and analysis contained in these declaratory statements are directly applicable to the present case and Bass believes that these declaratory statements provide detailed analysis and discussion that is very informative.
and pertinent to any application of §561.22 and §561.42 to the facts as presented herein.

FACTS

Bass is a major multinational enterprise which is engaged through subsidiary companies in a variety of businesses, including alcoholic beverage and soft drink production, hotels, and leisure retail (e.g. taverns, betting and gaming establishments). Bass is a United Kingdom holding company which is headquartered in London, England. Bass is a public company. Its stock is traded on the London Stock Exchange and on the New York Stock Exchange. As of December 1997, Bass was the 26th largest public limited company in the United Kingdom on the basis of market capitalization.

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The subsidiaries of Bass involved in the hotel business are identified on the right side of the chart. Each subsidiary identified on the hotel side of the chart is wholly owned by the preceding subsidiary, and each subsidiary is operated independently of the other subsidiaries. Each subsidiary has been created for a specific business purpose or function. No subsidiary in the Brewing Unit on the chart has any officer in common with any subsidiary in the Hotel Unit, nor is any member of the Board of Directors of any corporation in the Brewing Unit a member of the Board of Directors of any corporation in the
Hotel Unit. Accordingly, each corporation in the Brewing Unit operates independently of each corporation in the Hotel Unit. No corporation, or director or officer of any corporation, in the Brewing Unit influences the operations of, or is involved with, any corporation in the Hotel Unit.

A. Bass' Hotel Operations

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Until 1997, Bass Ale was the only brand produced by BBL and sold in the United States. The brand has been, and is currently, imported into the United States by Guinness Import Company, an independent company, unrelated to Bass, which sells the brand to licensed wholesalers throughout the United States, including Florida wholesalers. In 1997, Bass Beers Americas, headquartered in Atlanta, was formed to sell Hooper's Hooch alcohol lemon drink, another BBL brand, to licensed wholesalers throughout the United States. This brand is presently sold in the State of Florida. As reflected on the attached Basic Ownership Chart, BBL is not a part of the corporate chain of ownership on the hotel side of the Bass businesses and the corporations owning and operating the hotels are not, in anyway, owned, controlled or connected to BBL, except very remotely through Bass. No subsidiary of Bass, except BBL, holds an alcoholic beverage license or engages in the sale or distribution of alcoholic beverages.

No BBL alcoholic beverage product will be sold in any hotel acquired by Bass or its subsidiaries in the State of Florida.
LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Bass, a public corporation, seeks to acquire and develop upscale hotels in the State of Florida. Bass believes that the hotel industry in Florida has an unusually high future growth and profit potential. Bass seeks to capitalize on this potential by acquiring and developing upscale hotels in Florida. The sole purpose of Bass seeking to acquire and develop upscale hotels in Florida is to expand its hotel operations into the State of Florida because of the profit potential and future growth possibilities. The sale of alcoholic beverages at such hotels is merely incidental to the operation of the hotels but at the same time a very necessary component to any successful hotel operation. The primary business of Bass, however, is not the sale of alcoholic beverages at retail but, instead, is the operation and management of hotels or the franchising of hotels.

Bass does not intend to acquire or develop hotels in Florida for the purpose of selling alcoholic beverages or to create a connection or affiliation between an alcoholic beverage retailer and a beer manufacturer. The acquisition and/or development of hotels in Florida, with the resultant issuance of alcoholic beverage vendor licenses to the owners of or franchisees of the hotels, creates a very remote and indirect connection between an alcoholic beverage vendor and a beer manufacturer. However, such very remote connection exist only because of the connection between Bass and BBL. As previously discussed, BBL does not
manufacture alcoholic beverage products in the United States and will not sell any of the alcoholic beverage products produced by it or distributed by Bass Beers Americas to any hotel owned, operated or franchised by Bass or any subsidiary of Bass in Florida.

Accordingly, the development and/or the acquisition of the hotels by subsidiaries of Bass does not create an outlet for BBL products nor provide BBL with any advantage in the market place. The BBL products will not be in competition with other alcoholic beverage products sold at the hotels. Further, under the corporate structure as heretofore discussed, the subsidiaries of Bass which own, operate and/or franchise hotels in Florida, operate independently of BBL. BBL also operates totally independent of and separate and apart from the subsidiaries owning, operating and franchising hotels. BBL cannot and will not be involved in the day to day operation of any hotel owned, operated or franchised by Bass or its subsidiaries in Florida and, without the sale of a BBL product to such hotels, would have no reason to be involved in the operation of or decision making process of such hotels. Instead, BBL, through independently owned Guinness Import Co., will be selling its beer product (Bass Ale) to other vendors in Florida through the wholesale distribution tier, which is independent of and not affiliated with Bass or any subsidiary thereof. No alcoholic beverage vendor sold a BBL product will be affiliated or connected with Bass or any of its subsidiaries, directly or indirectly.
Accordingly, BBL's lack of control of, or participation in, any hotel owned, operated or franchised by subsidiaries of Bass, will not and cannot influence, and indeed would have no reason to influence, which alcoholic beverage products are sold by a Bass hotel. Any decision by a hotel owned, managed and/or franchised by subsidiaries of Bass under the aforesaid corporate scheme regarding brands of alcoholic beverages to be sold at the hotel will result from the independent business decision of the hotel owner or franchisee.

It is the responsibility and duty of the Division to construe and interpret the provision of §561.22 and §561.42 and apply these 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. Clearly, 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). Accordingly, a statute must be interpreted so as to avoid a construction that results in unreasonable, harsh, or absurd consequences. Hamilton v. State, 645 So.2d 555 (Fla. 2nd DCA 1994). Unreasonable or ridiculous interpretations distort the fundamental principals of statutory construction and mandate the use of reasonable interpretations. Drost v. State Department of Environmental Regulation, 559 So.2d 1154 (Fla. 3rd DCA 1989).
If Bass subsidiaries under the facts as described above develop and/or acquire upscale hotels in Florida, BBL becomes remotely connected with an alcoholic beverage vendor. However, such connection is meaningless and of no consequence under the facts as heretofore described. There is clearly no attempt by BBL to gain control of a retail vendor establishment or to become integrated within the retail sales market. No alcoholic beverage product produced by BBL will be sold at any of the hotels acquired in Florida. Further, the acquisition of hotels in Florida by subsidiaries of Bass is not intended to nor can such acquisition cause or enable BBL to control alcoholic beverage prices nor to give itself preference in sale of its products to the detriment of other manufacturers or wholesalers, nor to gain a competitive advantage over other retail vendors in Florida. Instead, the connection between BBL and the acquired hotels is an unintentional but unavoidable consequence of the acquisition of hotels in Florida by Bass subsidiaries.

Under the facts as stated, the development and/or the acquisitions would not give BBL the opportunity to control the management or operation of a retail vendor establishment, or to control the decisions of the vendor regarding the sale of alcoholic beverages, or in any way to control the decision of the vendor as to the alcoholic beverage products it will sell. Further, because BBL products will not be sold at the developed/or acquired hotels, BBL products will not be competing with other alcoholic beverage products in the markets surrounding
the hotels. Again, it must be emphasized that the sale of any alcoholic beverage product at a developed/or acquired hotel is merely incidental to the main business, i.e. the operation and management of a hotel providing lodging to guests.

The Division should not construe the provisions of §561.22 and/or §561.42, Florida Statutes, to prohibit any connection no matter how indirect and remote between an alcoholic beverage manufacturer and vendor, (1) when such connection clearly does not result in the integration of a manufacturer into the business of a retail vendor; (2) where other retail vendors cannot be affected competitively because the manufacturer's products are not sold at the hotel locations; (3) where no control, direct or indirect, over the management and operation of the vendor (hotel) can be exerted by the manufacturer; and (4) where the retail vendor is not financially obligated to the manufacturer. Indeed, no reason exists for BBL to even attempt to control, directly or indirectly, or influence the operation and management of the hotels because none of its products will be sold at the hotels. In this case, the remote connection results from a business transaction unrelated to the sale of alcoholic beverages. Under such circumstances, where no evil exists to be corrected, a construction of §561.22 or §561.42 which results in the finding of a violation, would be unreasonable, arbitrary, harsh and absurd. Moreover, such construction would create a prohibition that could not have been intended nor envisioned by the Florida legislature.
In State ex rel. Continental Distilling Sales Co. v. Vocelle, 27 So. 2d 728 (Fla. 1946), the Florida Supreme Court recognized that corporations are legal entities by fiction of law, and their purpose is generally to limit liability and serve a business convenience, and that courts are reluctant to pierce the corporate veil, and only in exceptional cases will they do so. In the Vocelle case, which is more akin to the present case than any other case decided by the Florida courts on this subject, a foreign distiller of alcoholic beverages (Continental Distilling Corporation) brought an action against the Director of the Beverage Division to compel the issuance to it of a license as a wholesale distributor of liquor. (a manufacturer may hold a wholesale license in Florida) Through separate corporate entities and stock ownership, Continental Distilling Corporation, a manufacturer of liquor, was related to a retail vendor of liquor. The court refused to apply the provisions of §561.22, Fla. Stat., by opining that the corporations were legal entities by fiction of law and that there was no evidence presented that the corporations had been formed for the purpose of evading the statutes and, as a result thereof, the Beverage Director was required to issue a wholesale distributor license to Continental, regardless of its affiliation with a retail vendor of alcoholic beverages caused by the manufacturer’s and retailer’s status as wholly owned subsidiaries of another company.
In April of 1992, the Division was requested to give its opinion as to whether or not it would be a violation of §561.42, Florida Statutes, for Holiday Inns', Inc., a subsidiary of Bass, to provide financing to certain Holiday Inn franchisees for capital improvements to hotel and motel premises when, at that time, Bass subsidiaries owned or franchised certain Holiday Inns in Florida. (See appendix 4 for discussion of past acquisition of Holiday Inns by Bass subsidiaries in Florida).

After consideration of Bass' corporate structure and its relationship with its subsidiary, including BBL, the General Counsel of the Department of Business Regulation opined that an alcoholic beverage manufacturer (BBL) would not be indirectly providing financial assistance to an alcoholic beverage vendor in violation of §561.42(1) where a subsidiary of Bass, Holiday Inns Franchising, Inc., was to provide arms-length financing to certain Holiday Inn franchisees. (See appendix 5). Pertinent in the discussion by the General Counsel was again the case of State ex rel. Continental Distilling Sales Co. v. Vocelle, supra.

CONCLUSION

Accordingly, it is the position of Bass that the development and/or acquisition of upscale hotels in Florida by subsidiaries of Bass, would not, under the facts as described above, be violative of the provisions of §561.22 and §561.42, Florida Statutes. Under the circumstances as heretofore described, Bass believes that the Division should conclude that the development and/or acquisition of the hotels and the financing of franchisees
as heretofore described should not be deemed violative of the afore-described statutory provisions. Such a construction is imperative if Bass is to expand its hotel operations into the State of Florida.

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ATTORNEYS FOR BASS PLC
Bass America, Inc. and Holiday Corporation together own approximately 25% of Bristol Hotel Company, a public company which owns and operates Holiday Inn hotels and other branded Bass hotels throughout the United States.
Bass Cocoa Beach, Inc. and Bass Management Services, Inc. (License #15-01847S)
d/b/a Holiday Inn - Cocoa Beach
1300 N. Atlantic Avenue
Cocoa Beach, FL 32931

Bass Miami International Airport, Inc. and Bass Management Services, Inc. (License #23-09157S)
d/b/a Holiday Inn - LeJeune Center
950 N.W. LeJeune Road
Miami, FL 33126

Bass Maingate West, Inc. and Bass Management Services, Inc. (License #59-005295*)
d/b/a Holiday Inn - Maingate West
7300 W. Irlo Bronson Highway
Kissimmee, FL 34746

(*) Please note that liquor license at Holiday Inn - Maingate West has been placed in escrow
due to the granting of license to Angel's Maingate, Inc. to operate restaurant

Bass Orlando International Airport, Inc. and Bass Management Services, Inc. (License #58-029893)
d/b/a Holiday Inn - Orlando International Airport
5750 T.G. Lee Boulevard
Orlando, FL 32822

Bass Orlando International Drive, Inc. and Bass Management Services, Inc. (License #58-029885)
d/b/a Holiday Inn - International Drive
5515 International Drive
Orlando, FL 32819

Bass Orlando Lee Road, Inc. and Bass Management Services, Inc. (License #58-029875S)
d/b/a Holiday Inn - Lee Road
626 Lee Road
Orlando, FL 32810

Bass (Tampa), Inc. and Bass Management Services, Inc. (License #39-06215)
d/b/a Holiday Inn - Busch Gardens
2701 E. Fowler Avenue
Tampa, FL 33612
STATE OF FLORIDA

DEPARTMENT OF BUSINESS REGULATION
THE JOHNS BUILDING
725 SOUTH BRONOUGH STREET
TALLAHASSEE, FLORIDA 32301

Bob Graham, Governor
Gary R. Rutledge, Secretary

August 4, 1983

Mr. Barry R. Davidson
Steel Hector & Davis
Southeast Bank Building
Miami, Florida 33131

Re: Intercontinental Hotels Corporation

Dear Mr. Davidson:

Thank you for your correspondence of June 2, 1983 containing the proposed affidavit forms. Upon submission of the completed affidavit forms and the Intercontinental otherwise meeting the necessary qualifications to hold a Florida Statute 561.20(2)(a)1 and 3 beverage license, the same would be issued.

Trusting that this is in accord with your understanding of this matter, I remain

Sincerely,

HAROLD F.X. PURNELL
General Counsel
(904) 488-7365

cc: Howard M. Rasmussen, Director
Division of Alcoholic Beverages and Tobacco

Office of the Secretary
Division of Hotels & Restaurants

Division of Alcoholic Beverages & Tobacco
Division of Florida Land Sales & Condominiums

Division of Par-Mutuel Wagering
1350 NW 12th Avenue, Room 332
Miami, Florida 33136
June 2, 1983

Harold F. X. Purnell, Esq.
General Counsel
Department of Business Regulation
State of Florida
The Johns Building
725 Bronough Street
Tallahassee, Florida 32301

Re: Intercontinental Hotels Corporation

Dear Harry:

Pursuant to our meeting several weeks ago, I enclose herewith three partially completed affidavits reflecting the activities of The Paddington Corporation, Carillon Importers Limited and James Catto & Co., Inc., in the United States. Based on our prior correspondence of January 19, February 9, February 16, February 28, March 15 and March 30 and our discussions during that period, it is my understanding that upon submission of completed affidavits in the form attached, Intercontinental Hotels Corporation may obtain from the Division of Alcoholic Beverages and Tobacco an appropriate retail liquor license pursuant to Florida Statute 561.20(2)(a)(1) and (3) to operate food and beverage facilities in connection with any hotel which Intercontinental owns or operates in Florida. Of course, issuance of the appropriate retail liquor license or licenses would be contingent on compliance by Intercontinental with all other requirements for issuance of such license.

As we discussed, I will look forward to receiving confirmation of my understanding of the position of the Department of Business Regulation as set forth above.

Thanks for your continuing cooperation.

Cordially yours,

Barry R. Davidson

BRD/maj
Enclosures
[Form of Affidavit]

1. I, [name of officer], am the [title] of [name company] (the "Company") and am familiar with the operations of the Company.

2. The Company is an importer of distilled spirits [and wines] manufactured outside the United States, within the provisions of Fla. Stat. 561.14(5). The Company distributes such spirits in the United States exclusively to unaffiliated licensed manufacturers, wholesalers and distributors or, as required by law, the state agency in charge of alcoholic beverage distribution.

3. Such operations are the only operations relating to the distribution and sale of alcoholic beverages carried on by the Company in the United States.

[Name of officer]
[Title]
MEMORANDUM

TO: Richard Scully, Director
Division of Alcoholic Beverages & Tobacco

FROM: Donald D. Conn, General Counsel

DATE: April 28, 1992

RE: Bass/Holiday Inn -- Section 561.42, Florida Statutes

By memo dated April 21, 1992, you have requested that I offer an opinion on the following question: If Holiday Inns, Inc., provides financing to certain Holiday franchisees for capital improvements to hotel and motel premises, would such loans be deemed a violation of Section 561.42, Florida Statutes?

The essential facts upon which this opinion is based are as follows: Bass plc is a United Kingdom holding company, and one independent branch of the Bass conglomerate is engaged in the malt beverage business; Bass Brewing, Ltd., a British subsidiary of Bass, owns and operates breweries in the United Kingdom, but it does not own or operate any manufacturing or other facilities in the United States, nor does it hold any U.S. or foreign manufacturer’s licenses; Bass brewing products are imported and sold in the United States by an independent company, unrelated to Bass in any way; another independent arm of Bass is engaged in the hospitality and lodging business; Bass is the indirect corporate parent of Holiday, which owns or franchises more than 1600 Holiday Inn hotels around the world; the brewery and hospitality branches of Bass' businesses are independently managed and there are no officers or directors in common between Bass brewing and Holiday; the only alcoholic beverage licenses held by Holiday Inns are certain vendor's licenses in Florida held in connection with wholly-owned Holiday Inn properties.
Page Two
April 28, 1992
Richard Scully, Director

Based on the above stated facts, in my opinion Bass and Holiday Inns are separate legal entities, notwithstanding the relationship which they have through a common parent. There is no indication, in the above facts, that the separate corporations were established for the purpose of evading the alcoholic beverage laws, and therefore they should, in my opinion, be recognized as separate corporate entities.

The facts, as set forth above, pertaining to this opinion are similar to those in the case of State ex rel. Continental Distilling Sales Co. v. Vocalee, 27 So. 2d 728 (Fla. 1946), wherein a subsidiary company of an alcoholic beverage manufacturer sought a wholesale license, but this agency initially refused to issue such license on the basis of the relationship which existed between the applicant and its subsidiary, the manufacturer. The Florida Supreme Court issued a writ of mandamus which compelled issuance of the license and concluded that the two companies were separate legal entities, notwithstanding the relationship through a common parent. The Florida Supreme Court stated:

Corporations are legal entities by fiction of law. Their purpose is generally to limit liability and serve a business convenience. Courts are reluctant to pierce the corporate veil and only in exceptional cases will they do so. Such instances are for fraud as where creditors are misled and defrauded or where the corporation is created for some illegal purpose or to commit an illegal act. 27 So.2d 729

In the more recent case of Danja Jai-Alai Palace, Inc. v. Sykes, 450 So.2d 1114 (Fla. 1984), the Florida Supreme Court again stated that the corporate veil may not be pierced absent a showing of improper conduct. Although the underlying facts involved in the Danja Jai-Alai case are substantially different than those set forth in this opinion, the principle of law remains the same. Specifically, absent some fraudulent, unjust, or illegal activity which justifies piercing of the corporate veil, corporate entities will be regarded as separate and independent, despite the fact that they may be sister corporations which are wholly-owned subsidiaries of a parent corporation.
Section 561.42(1), Florida Statutes provides that:

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 Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property of any description or by the giving of any rebates of any kind whatsoever. No licensed vendor shall accept, directly or indirectly, any gift or loan of money or property of any description or any rebates from any such licensed manufacturer or distributor.

In my opinion, the prohibitions set forth in Section 561.42(1), Florida Statutes, do not apply to the facts upon which this opinion is based since Holiday Inns, Inc. is not a licensed manufacturer or distributor of any of the beverages regulated under the Beverage Law. While certain Holiday franchisees may hold vendor licenses, they are not precluded by the above quoted statute from receiving a loan from an independent corporate entity, such as Holiday Inns, Inc., which is in no way licensed under the provisions of Chapter 561, Florida Statutes.

I trust that this is responsive to the question raised, and if you would like to discuss this further, please let me know.

DDC/mm

xc: Janet E. Ferris, Secretary
MEMORANDUM

TO:    Donald D. Conn, General Counsel
FROM:  Thomas A. Klein, Chief Attorney
DATE:  July 10, 1991
RE:    Bass Ale ownership of Holiday Inn's

FACTS:

In late 1988, Bass Ale and its subsidiary corporations were issued at least seven alcoholic beverage licenses at various Holiday Inn's in the State of Florida. (See L.B. Schoenfeld memo, which is attached hereto as Exhibit A.) In issuing the licenses, the Division relied upon a statutory interpretation of Sections 561.22 and 561.42, Florida Statutes, which exempted foreign manufacturers of alcoholic beverages from the Tied-House Evil Law. Per Mr. Schoenfeld's institutional memory, the Division did not issue a formal legal opinion granting exemption to foreign manufacturers.

Subsequently in 1989, Universal Studios attempted to take advantage of the foreign manufacturer "loophole". On May 19, 1989, the Division reversed itself by stating that a foreign manufacturer could not have an ownership interest in businesses having a Florida alcoholic beverage license. (See letter to Joseph J. Kadow, which is attached hereto as Exhibit B.) In reaching its May 19, 1989 decision, it appears that the Division relied heavily upon an April 21, 1989 memorandum of law, which was submitted by J. Riley Davis. (See Exhibit C attached hereto.)

To date, the Division has adhered to its 1989 decision denying licensure to foreign manufacturers. I concur with Mr. Davis' memo that the Legislature intended that Tied-House Evil restrictions apply uniformly to both domestic and foreign manufacturers. Most recently, Mr. Scully has inquired as to whether the Division has any legal grounds to cause Bass Ale to divest itself from ownership in the 1988 licenses. (See Exhibit D attached hereto.)
ISSUE:

Does the Division have legal authority to cause Bass Ale to divest itself from having any ownership interest in the 1988 Holiday Inn licenses?

DISCUSSION:

The short answer to the above referenced question is no. This is because Bass Ale has a legitimate equitable estoppel defense to any administrative action the Division might bring.

The well established elements of equitable estoppel are:

(1) A property owner's good faith reliance on (2) Some act or omission of the government and (3) A substantial change in position or the incurring of excessive obligations and expenses so that it would be highly inequitable and unjust to destroy the right acquired. Ready Creek Improvement District vs. State Department of Environmental Regulation, 480 So. 2d 642, 646 (Fla. 1st DCA 1986) (other citations omitted.)

The doctrine of equitable estoppel, although rarely applied against State action, may be applicable where there are special circumstances and some positive act on the part of an officer of the State. Special Disability Trust Fund vs. Aetna Casualty and Surety Company, 397 So. 2d 381 (Fla. 1st DCA 1981). However, the State can not be estopped by unauthorized acts or representations of its officers. Greenhut Construction Company vs. Henry A. Knott, Inc., 247 So. 2d 517 (Fla. 1st DCA 1971).

In Greenhut, Knott (a contractor who was not certified in Florida) and Greenhut (a certified Florida contractor) both submitted bids to DGS for construction of two Legislative office buildings to be built at the Capitol Center. Prior to submitting its bid, Knott contacted DGS's chief of the Bureau of Construction advising that it was duly qualified in other states and had previously secured temporary licensure from the Florida Board of Contractors. Knott specifically inquired as to whether the Bureau Chief could advise whether it would be satisfactory for Knott to submit a bid. The Bureau Chief instructed Knott to submit a bid and stated that he would inform the contractor if bid ineligibility was at issue. No further communications took place between DGS and Knott until after the bid opening.

Upon being declared low bidder on the 10 million dollar project, Knott's qualification as a contractor was challenged by Greenhut, the second lowest bidder. DGS then applied for and received an opinion from the Attorney General, which effectively
awarded the contract to Greenhut. Whereupon, Knott went to the circuit court and obtained an injunction against DGS on the basis of estoppel.

The First District Court of Appeal in reviewing the "misrepresentations" made by DGS's Bureau Chief opined as follows:

"It is obvious that the circumstances of this case do not bring it within the rule relating to estoppel. In the first place the question about which Knott's representative made inquiry to the Bureau Chief of General Services did not involve a question of fact but, on the contrary, involved a pure question of law. Whether Knott was qualified under the Statute to submit a bid for the construction of the Legislative Buildings in the case involved a complex question of law....Knott in effect sought an administrative declaratory judgment from a state functionary who, while eminently qualified in the fields of architecture and engineering, is not shown to possess any of the qualifications necessary to render an authoritative judgment on the legal question posed by Knott, and who certainly is not one on whose opinion Knott had any right to rely." Greenhut at 524. (emphasis supplied).

The Court also pointed out that Knott neither had any detrimental reliance nor changed its position as the result of the Bureau Chief's verbal assurances.

Greenhut, supra, is still good law and was cited recently in Dade County v. Fontainebleau Gas and Wash, 570 So. 2d 1066 (Fla. 3rd DCA 1990). In that case Dade County rezoned property for the construction of a bank on the condition that a restrictive covenant would apply. The county zoning board made the official ruling, which was reflected on the zoning map, but failed to record the restrictive covenant in the official public record. Fifteen years later, a purchaser constructed a service station on the property pursuant to a building permit, which was inadvertently issued by the county, contrary to applicable land use regulations. The Third District Court of Appeal held that Dade County could not be estopped from enforcing a duly enacted zoning ordinance. The property purchaser was bound by law to be on notice and could not claim detrimental reliance upon the county's inadherence.
Of particular interest to the Division are the recent trilogy of cases, which applies the doctrine of equitable estoppel to an agency's issuance of permits. In *Ready Creek*, *supra*, DER issued a permit to a contractor, who in reliance thereon, expended approximately 3 million dollars to construct a sewage treatment plant. Subsequent to the permit's issuance, a third party challenged DER, which ultimately led to the agency upholding the permit under the doctrine of equitable estoppel. The First District Court of Appeal affirmed the same, notwithstanding the fact that the contractor had expended the funds with full knowledge of pending litigation by the third party.

In *Tri-State Systems vs. Department of Transportation*, 500 So. 2d 212 (Fla. 1st DCA 1986), review denied 506 So. 2d 1041 (Fla. 1987), DOT was estopped from revoking a permit based upon the material misrepresentations of one of its employees. Specifically, *Tri-State Sign Company* sought to purchase signs from another sign company, which had been previously permitted by DOT. Prior to consummating the transaction, *Tri-State* inquired of DOT and was told that the signs in question were valid and legal at the time of acquisition. But for the misrepresentations, *Tri-State* would not have purchased the signs.

Interestingly, the same attorney who prevailed in *Tri-State, supra*, attempted to "ride" the doctrine of equitable estoppel in *Richard Nelson Advertising vs. Department of Transportation*, 513 So. 2d 181 (Fla. 1st DCA 1987). In *Richard Nelson, supra*, the First District Court of Appeal upheld DOT's revocation of a sign permit because the application contained material misrepresentations. The agency's employee did not make a material misrepresentation, but erred by over-looking a discrepancy in the permit application.

CONCLUSION:

In applying the above cited estoppel elements and case law to the Bass Ale scenario, the following is readily ascertainable:

1. Bass Ale has made a good faith reliance upon the Division's 1988 decision to license the seven Holiday Inn's.

2. It is arguable that the Division's licensure was inadvertent, being predicated upon an erroneous statutory interpretation. This is supported by the Division's change of positions from 1988 to 1989. However, Bass Ale could raise a viable defense that the 1988 interpretation was reasonable, in light of the statute's ambiguity. Likewise, the Division may have a difficult time in proving "inadvertence" if an attorney was involved in rendering the 1988 interpretation.
3. But for the Division's 1988 interpretation, resulting in licensure, Bass Ale would not have purchased the seven Holiday Inns.

4. In reliance upon the Division's 1988 interpretation, resulting in licensure, Bass Ale has incurred excessive financial obligations, possibly exceeding the 3 million dollar amount expended by the contractor in Reedy Creek. The facts of Greenhut are likewise distinguishable because here the agency's misrepresentations were not "casual", the reliance thereon was not unreasonable and the change in statutory interpretation would certainly be detrimental.

5. In that the 1988 decision was authorized by the Division's Chief of Licensing and Director, and there were no material misrepresentations in the application, the Division is estopped from revoking the licenses for Tied-House Evil violations.
DEPARTMENT OF BUSINESS REGULATION  
JOHNS BUILDING TALLAHASSEE, FL 32399-1021

MEMORANDUM
TO: Richard W. Scully, Director
FROM: L. B. Schoenfeld, Chief, Bureau of Licensing and Records
DATE: June 5, 1991

Subject: Bass Ale

The following is a chronology of events dealing with the licensing of "Bass" as a retailer in the State of Florida. "Bass" hereinafter simply referred to as Bass Ale, is a manufacturer of malt beverages in England.

Applicable Statutes:

561.22, 561.42

Situation:

In late 1988 Bass Ale and its subsidiary corporations were issued at least 7 alcoholic beverage licenses at various Holiday Inns in the State of Florida. The licenses are identified as follows:

<table>
<thead>
<tr>
<th>number</th>
<th>series</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>58-02987 4COP</td>
</tr>
<tr>
<td>2.</td>
<td>58-02989 4COP</td>
</tr>
<tr>
<td>3.</td>
<td>59-00529 7COP</td>
</tr>
<tr>
<td>4.</td>
<td>58-02988 4COP</td>
</tr>
<tr>
<td>5.</td>
<td>15-01847 4COP</td>
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<tr>
<td>6.</td>
<td>23-09157 4COP</td>
</tr>
<tr>
<td>7.</td>
<td>39-00215 4COP</td>
</tr>
</tbody>
</table>

The licenses were issued based on the Division's interpretation of the applicable statutes at the time. Over simplified it was decided that Bass Ale was not licensed in Florida based on a strict reading of the law and did not fall under these statutes.

The Division of Alcoholic Beverages and Tobacco had vacillated on this issue over the years with the latest swinging of the pendulum falling in Bass Ale's favor.

In early 1989, a similar situation arose with Universal Studios. The pendulum swung again and it was decided that the statute prohibited a manufacturer from being licensed as a vendor and that being an out of country manufacturer should not allow for any advantage over their domestic counterparts.

Thereafter, Bass Ale wanted to obtain more retail licenses and was told it could not because of the agency's position. Bass Ale has tried for 2 legislative sessions to obtain some statutory changes but has been unsuccessful.

EXHIBIT A
Conclusion:

The position of the agency for the last 2 years has been that:

1. The statute (561.22) prohibits anyone from being a manufacturer and a vendor at the same time and should not be read so that an out of country manufacturer can do what an in country manufacturer can not do.

2. The statute (561.42) dealing with the term "licensed manufacturer" means licensed anywhere (in Florida or any foreign country) and is not restricted to licensed in Florida.

Attachments

Some material is attached to support the contents of this chronology.

If after your review of this chronology you have any questions, please feel free to call our office.

LBS/cm