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

IN RE:

PETITION FOR DECLARATORY STATEMENT,
On behalf of FLORIDA ORANGE GROVES, INC.,
DS 2003-011

Southern Wine & Spirits of America, Inc., National
Distributing Company, Inc., Premier Beverage, LLC,
Intervenors

ORDER DENYING PETITION TO INTERVENE

COMES NOW, the Director, Division of Alcoholic Beverages and Tobacco, and,
denies the Petition to Intervene filed by Southern Wine & Spirits of America, Inc.,
National Distributing Company, Inc., and Premier Beverage, LLC, Intervenors, as
follows:

1. On April 18, 2003, Florida Orange Groves, Inc. issued a Petition for
Declaratory Statement, DS 2003-011, to the Division of Alcoholic Beverages and
Tobacco.

2. On June 16, 2003, a Petition to Intervene was issued to the Division of
Alcoholic Beverages and Tobacco on behalf of Southern Wine & Spirits of America,
Inc., National Distributing Company, Inc., and Premier Beverage, LLC.

3. The issue for which a declaratory statement was sought was whether §
561.42 (1), Florida Statutes (2002) prohibits the proposed business arrangement, and
specifically sought the interpretation of what constituted prohibited gifts or loans of
money or property of any description by a manufacturer or distributor to a vendor.
4. The Division filed a declaratory statement on July 18, 2003, declaring the Petitioner’s proposed business plan improper under the Beverage Laws of the State of Florida. Therefore, Intervenors’ Petition to Intervene is moot.

ORDER

Based upon the foregoing, it is hereby ordered that Intervenor, Southern Wine & Spirits of America, Inc., National Distributing Company, Inc., and Premier Beverage, LLC’s Petition to Intervene in the Petition for Declaratory Statement, DS 2003-011, shall be denied.

DONE AND ORDERED this 24th day of July, 2003.

[Signature]
Jack, Tater, Director
Division of Alcoholic Beverages & Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
(850) 488-3223

Copies furnished:

David Lichter
David Lichter & Associates, P.A.
2999 N.E. 191st Street, Suite 709
Aventura, Florida 33180

Christina Pardieck, Assistant General Counsel
Office of General Counsel

Sarah Wachman, Agency Clerk
IN RE:

PETITION FOR DECLARATORY STATEMENT,
On behalf of FLORIDA ORANGE GROVES, INC.,

Petitioner.

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco ("Division") pursuant to § 120.565, Fla. Stat. (2002). The Petitioner, Florida Orange Groves, Inc., has filed a Petition for Declaratory Statement, containing a statement of facts, and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement with Supply and Distribution Agreement is attached hereto and incorporated by reference.

ISSUE PRESENTED

The Petitioner presents the following issue to the Division:


1. On or about March 13, 2003, Florida Orange Groves, Inc. sent a letter to the Division requesting a review of a Supply and Distribution Agreement that Florida Orange Groves, Inc. wished to implement. After a careful review of the letter and Supply and Distribution Agreement, the Division, in a letter dated March 21, 2003, instructed Florida
Orange Groves, Inc. to file a petition for a declaratory statement. The division instructed that the petition contain specific proprietary information intended to be exchanged with vendors, the statutory provisions on which the declaratory statement was sought, and a description of how the statutes might substantially affect the petitioner in its particular set of circumstances. The Petition for Declaratory Statement was filed on April 18, 2003, thereby giving the Division 90 days to respond from the date of the receipt of the letter. The Division renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement.

2. The conclusion of this Declaratory Statement is based on the facts described in Petitioner’s Petition for Declaratory Statement and its Supply and Distribution Agreement (hereinafter “the Petition”), research by the Division, and the particular factual assertions described therein. 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:

Florida Orange Groves, Inc. is a manufacturer and distributor of wine as a Certified Florida Farm Winery. Florida Orange Groves, Inc. has jointly filed patents relating to the production of Florida citrus wine with the U.S. Patent Office and the Florida Department of Citrus.

Florida Orange Groves, Inc. is engaged in the manufacture of wine and operates a retail location for its product that is contiguous with its manufacturing facility. Florida Orange Groves, Inc. distributes its wine within the State of Florida. Because manufacturers are prohibited, in the State of Florida, from operating more than one retail location to sell their product, Florida Orange Groves, Inc. feels that an alternate way to bring the product to Florida consumers needs to be found.

Florida Orange Groves, Inc. wants to encourage independent people to open new businesses to carry the product. These special package stores will all be individually owned and operated and independent of the manufacturing operation. Florida Orange Groves, Inc. wants to provide information, guidance, advice, and a promise to expand the manufacturing
facilities to accommodate the needs of the special package stores in exchange for the special package store owners’ promise to purchase wine only from Florida Orange Groves, Inc.

This agreement is for the duration of a five-year period. The satellite store is required to agree to various obligations listed in the “Supply and Distribution Agreement.” These obligations include maintaining a tasting bar for sampling the product, providing the samples to customers at no charge, providing certain types of music and lighted displays, maintaining a display balance between wine, accessories and wine merchandise as directed by Florida Orange Groves, and selling no other non-wine or non-winery related merchandise that is not pre-approved by Florida Orange Groves.

CONCLUSIONS OF LAW


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

5. § 561.08, Fla. Stat. (2002), 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. A court will generally uphold 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. 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 Hosp., Inc. v. State, Dep’t of Health and Rehabilitative Services, 500 So. 2d 620 (1st DCA 1986); SOS Alford v. Sch. Bd., 511 So. 2d 438 (1st DCA 1987).

7. Therefore, it is the responsibility and duty of the Division to construe and interpret the provision of § 561.42(1), Fla. Stat. (2002), and apply said provision to a stated set of facts in a reasonable manner that comports with the purpose, intent and spirit of the statutory provisions in order to avoid 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, Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993). Consequently, the legislative intent is the polestar by which the agency or a court must be guided in interpreting a statutory provision, In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So. 2d 1130 (Fla. 1990).

9. Where reasonable differences may arise as to the meaning or application of a statute, the legislative intent must be the polestar of judicial construction, Lowry v. Parole and Prob. Comm’n, 473 So. 1248 (Fla. 1985).

10. 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).
11. 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. 2d DCA 1994). Unreasonable or ridiculous interpretations distort the fundamental principals of statutory construction and mandate the use of reasonable interpretations, *Drost v. State Dep’t of Envtl. Regulation*, 559 So. 2d 1154 (Fla. 3d DCA 1989).

12. To determine the legislative intent a court will consider the act as a whole, i.e. the evil to be corrected, the language of the act, including its title, history of its enactment, and state of the law already in evidence, *State Dep’t of Envtl. Regulation v. SCM Glidco Organics Corp.*, 606 So. 2d 722 (Fla. 1st DCA 1992).

13. Of the utmost importance and concern is the relationship between a manufacturer and a vendor. § 561.42 (1), Fla. Stat. states the following:

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 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; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit for liquors sold, made strictly in compliance with the provisions of this section.

14. The overall intent underlying the enactment of the “tied-house evil” statute was to divorce manufacturing-distributing activities of the liquor 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

15. There has been no Florida court decision determining the applicability of § 561.42, Fla. Stat. (2002), to a factual situation such as the one presented by Florida Orange Groves, Inc. However, both federal and state courts construing “tied-house evil” provisions have provided guidance as to the purpose and intent of said statutory provisions and how the Division should construe and apply these provisions.

16. The Florida Supreme Court, in the case of *Pickerill v Schott*, 55 So. 2d 716 (1951), upheld the constitutionality of § 561.42 (1), Fla. Stat., and opined that statutes of this nature are aimed at the evil known as the “tied-house” and their purpose is to prevent the integration of retailer and wholesale outlets and to remove the retail dealer in intoxicating liquors from financial or business obligations to the wholesaler or manufacturer, with the exception of ordinary commercial credit (emphasis added). The Court further stated that the tied-house evil law prohibits manufacturers, wholesalers, and distributors from having any financial interest in retailers, directly or indirectly. The court traced the history of the tied-house evil provisions and opined 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.

17. § 561.42, Fla. Stat. (2002) is specifically intended to prohibit a relationship between a manufacturer and a vendor so as to prevent even the possibility of any such integration between a vendor and manufacturer or the appearance thereof. If the Division were to allow Florida Orange Groves to operate as intended, the manufacturer and the
vendor would appear virtually indistinguishable. This would obliterate the obvious purpose and intent of § 561.42.

18. § 561.42, Fla. Stat., has been in existence since 1935 and the Courts have consistently interpreted the section to prohibit a manufacturer from rendering financial assistance or aid to a vendor or to have any financial interest in, either directly or indirectly, a retail establishment, *Pickerhill* at 716 & *Mayhues* at 142. Courts have construed this provision to require that manufacturers and distributors be totally separate and apart from a vendor and be in no way involved in each other’s business, either financially or otherwise. No manufacturer located in Florida or elsewhere in the United States could have the relationship that Florida Orange Groves proposes to have with vendors in Florida.

19. States must also comport with the Federal Alcohol Administration Act, 27 U.S.C. § 205 (2003) entitled “Unfair competition and unlawful practices.” Subsection (a) “Exclusive Outlet” makes it unlawful for any wholesaler, producer or bottler of wine to require any retailer to purchase wine from it “to the exclusion in whole or in part” of wine sold by others. It is also unlawful under this subsection if the effect of any agreement is to restrict or hinder others from selling wine to a retailer. Subsection (b) “Tied-house” makes it unlawful for a wholesaler, producer or bottler of wine to induce any wine retailer to purchase wine from them to the exclusion in whole or part of wine sold by others by furnishing to the retailer any services, or other thing of value.

20. The Court in *Nat’l Distrib. Co. v. U.S. Treasury Dep’t, Bureau of Alcohol Tobacco & Firearms*, 626 F. 2d 997 (D.C. Cir. 1980) traced the history of the Federal Alcohol Administration Act and noted that Congress was most concerned about the “tied-
house” in which, through the creation of exclusive outlets and other inducements and assistance, producers and wholesalers gained control of retailers. The primary purpose of 27 U.S.C. § 205 (2003) is prevention of a form of vertical integration whereby wholesalers or producers might gain effective control of ostensibly independent retail outlets.

21. The court in *Fedway Assocs., Inc. v. U.S. Treasury, Bureau of Alcohol Tobacco & Firearms*, 976 F. 2d 1416 (D.C. Cir. 1992) did not resist the assertion that in passing the “tied-house” provision, Congress’ ultimate objective was to prevent wholesaler control of retailers. In so finding, the court also determined that Congress used “exclusion” to indicate placement of retailer independence at risk by means of a tie or link between the wholesaler and retailer or by any other means of wholesaler control. Thus, if Florida were to approve Florida Orange Groves’ purported exclusive distributorship this provision of the federal statute would clearly be violated.

22. In *Rice v. Norman Williams Co.*, 458 U.S. 654, 663 (1982), the court held that where there is clear conflict between the state and federal regulations, the federal law will pre-empt the state regulation under the Supremacy Clause. If the State of Florida’s tied-house evil statute was to be interpreted to license and endorse businesses such as Florida Orange Groves who are endeavoring to establish exclusive dealings with retailers, these statutes would be in conflict with federal statutes and regulations governing the industry, and as such, would be pre-empted.

23. 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

24. In *Joseph Schlitz Brewing Co. v. Cent. Beverage Co., Inc.*, 359 N.W. 2d 566 (Ct. App. Ind. 1977) the court construed a statute making it unlawful for the holder of a brewers permit to hold, acquire, possess, own, or control, or to have an interest, claim or title, in or to an establishment, company, or corporation holding or applying for a beer wholesalers permit, to only prohibit the brewer from interfering with the management operations of the wholesaler. The brewer, under such act, was prohibited only from directly or indirectly influencing the operations and managerial decision making processes of the wholesaler and/or retailer. If such interference was not present the statute was not violated.

25. In every state where the courts have had the occasion to construe and apply tied-house evil prohibitions, the court had to consider how much connection with a retailer is necessary to constitute an indirect interest within the purview of the tied-house provisions or that will result in a prohibited integration. In all cases the issue has been determined based on whether the manufacturer can exert control over the retailer or wholesaler. If such control does not exist, the tied-house evil provisions are not violated.

26. In *Hunter v. McKnight*, 86 So. 2d 434 (Fla. 1956) the Florida Supreme Court again interpreted the tied-house evil provisions as not prohibiting an affiliation that did not result in the integration of the manufacturer into the business of the retailer and that did not create financial business obligations between the manufacturer and the retailer. Consequently, if the evil sought to be corrected by the statutory prohibition did not exist, the statute should not be construed to prohibit the affiliation.
27. Again, in *Cent. Fla. Distrib. Co. v. Jackson*, 324 So. 2d 143 (1976), the court stated that the purpose of § 561.42, Fla. Stat., is to prohibit any financial obligation between a distributor and a vendor, thus preventing the control of retail outlets. When again confronted with construing and applying the provisions of Florida's tied-house evil law to a specific factual situation, the First District Court of Appeal in *Musleh v. Fulton Distrib. Co. of Fla.*, 254 So. 2d 815 (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.

28. It is clear from the case law that the legislative intent of § 561.42, Fla. Stat. (2002), is to prohibit a relationship between a manufacturer and vendor. If the Petitioner is allowed to implement its proposed business plan, they would be involved in the exact type of "direct-tie" that § 561.42 seeks to prohibit.

29. Under the facts as stated in the Petition, Florida Orange Groves focuses on the language of the Florida tied-house statute prohibiting "gifts" or "loans" by manufacturers or distributors to vendors. The intention of the prohibition of these gifts or loans is to avoid the control of retail outlets by distributors/manufacturers. It is clear that Florida Orange Groves controls the operation of its retail outlets. Indicative of this direct control is the Supply and Distribution Agreement that refers to the retail stores as "Satellites" the plain dictionary definition being something attendant, subordinate or dependent.

30. Florida Orange Groves controls the decision making processes of its retail outlets by providing specific suppliers of wine accessories and fixtures, advice on how to establish a new retail outlet, and a requirement that the retail outlets buy wine exclusively from Florida Orange Groves. While Florida Orange Groves claims that the package store
retail outlets would be individually owned and operated independent of the manufacturing operation, it is clear that the distributor and the retail outlet will be indistinguishable.

31. In addition to requiring that Florida Orange Groves serve as the exclusive supplier/wholesaler or alcoholic beverage distributor from which the satellite purchases any wine or any other alcoholic beverage, Florida Orange Groves also proposes that the satellite maintain a tasting bar at least twenty feet long, provide certain types of lighting and music displays, provide samples to customers at no charge and maintain a display/merchandise balance between wine, accessories and wine merchandise, "as directed by Florida Orange Groves," (emphasis added). Satellite stores are also instructed to sell no other non-wine or non-winery related merchandise that is not pre-approved by Florida Orange Groves.

CONCLUSION

Based upon the facts presented by the Petitioner, research by the Division, and the legal conclusions set forth in full herein, the Division declares that the Florida Beverage Laws prohibit Petitioner’s proposed business arrangement.

THE DIVISION HEREBY CONCLUDES:

A. That it is the responsibility of the Division to construe and interpret the provisions of § 561.42.

B. That the legislative intent of § 561.42 Florida Statutes is paramount.
C. That the longstanding and well-established intent of § 561.42 is to prohibit any relationship between a manufacturer of alcoholic beverages and a vendor licensed to sell alcoholic beverages.

D. That based on the legislative intent of § 561.42 this section applies to Florida Orange Groves, Inc.

E. That Petitioner’s proposed business arrangement is directly contrary to the intent of § 561.42.

F. That the Petitioner’s proposed business arrangement attempts to create a relationship between manufacturer and vendor that § 561.42 is specifically designed to prohibit.

G. That based on the foregoing facts and legal research, the Division cannot approve Petitioner’s proposed business arrangement.

H. That this conclusion is based on the facts described in the Petitioner’s Petition for Declaratory Statement, including the Supply and Distribution Agreement, and legal research by the Division. 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 18th day of July, 2003

[Signature]

Jack Tuter, Director
Division of Alcoholic Beverages & 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: Vincent R. Shook, 1500 Pasadena Avenue South, St. Pete, 877157, FL 33707, this 10th day of July, 2003.

[Signature]
Christina Pardieck
Assistant General Counsel
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

In re: Petition for Declaratory Statement
on Behalf of Florida Orange Groves, Inc.,
a Florida corporation,

Petitioner.

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PETITION TO INTERVENE

Southern Wine & Spirits of America, Inc., National Distributing Company, Inc.,
and Premier Beverage, LLC, by and through the undersigned counsel, petition to
intervene in the above-captioned declaratory statement proceeding instituted by Florida
Orange Groves, Inc., and states:

1. Southern Wine & Spirits of America, Inc., National Distributing Company,
Inc., and Premier Beverage, LLC ("the Intervening Parties") are the three largest
licensed wine and spirits distributors in the State of Florida. They include Southern
Wine & Spirits of America, Inc., holder of Manufacturers/Distributors License Number
WSL2300421, Rank KLD; National Distributing Company, Inc., holder of
Manufacturers/Distributors License Number WSL3902974, Rank KLD and Premier
Beverage, LLC, holder of Manufacturers/Distributors License Number WSL3900175,
Rank KLD.

2. The intervening parties together account for approximately 85% of the total
volume of wine and distilled spirits distributed in this State from manufacturers through

DAVID LICHTER & ASSOCIATES, P.A.
ATTORNEYS AT LAW
the Intervening Parties to retail vendors throughout the State and in interstate commerce. Petitioner’s Petition seeks a declaration concerning the way its wine is distributed and sold. The Intervening Parties are therefore substantially affected by the construction of Fla. Stat. § 561.42 sought by Florida Orange Groves, Inc.’s Petition for Declaratory Statement.

3. Notice of the filing of the Petition for Declaratory Statement was published on May 9, 2003 in Vol. 29, p.19 of the Florida Administrative Weekly. The purpose of publishing the notice of filing in the Florida Administrative Weekly is so that "[a]ny substantially affected party can intervene in a declaratory statement proceeding before the agency. . . ." Florida Department of Business Regulation v. Investment Corp. of Palm Beach, 747 So. 2d 374, 377 (Fla. 1999), quoting Chiles v. Department of State, 711 So. 2d 151, 155 (Fla. 1st DCA 1998).

4. The address of the Intervening Parties for purposes of this proceeding is that of their undersigned counsel.

WHEREFORE, Southern Wine & Spirits of America, Inc., National Distributing Company, Inc., and Premier Beverage, LLC respectfully pray that the Division enter an order granting the Petition to Intervene, that the Division conduct a hearing on the Petition for Declaratory Statement in accordance with Fla. Stat. §§ 120.569, 120.57 and Rule 28-105.003, Fla. Admin. Code and permit the Intervening Parties to present factual
and legal argument in opposition to Florida Orange Grove Inc.'s Petition for a Declaratory Statement.

Respectfully Submitted,

[Signature]

David H. Lichter
Florida Bar No. 359122
David Lichter & Associates, P.A.
2999 N.E. 191st Street, Suite 709
Aventura, FL 33180
(305) 933-9970
Attorneys for Intervening Parties Southern Wine & Spirits of America, Inc., National Distributing Company, Inc., and Premier Beverage, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by United States mail upon:

Michael Martinez, Esq.  
Chief Attorney  
Division of Alcohol Beverages & Tobacco  
Department of Business and Professional Regulation  
1940 North Monroe Street  
Tallahassee, FL 32399-1023

Vincent R. Shook, President "Florida"  
Florida Orange Groves, Inc.  
1500 Pasadena Avenue South  
St. Petersburg, FL 33707

DAVID LICHTER & ASSOCIATES, P.A.
ATTORNEYS AT LAW
PETITION FOR DECLARATORY STATEMENT BEFORE
THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

Date: April 18, 2003

By Petitioner:

Florida Orange Groves, Inc.
1500 Pasadena Ave. South
St. Petersburg, Florida 33707

Phone 1-727-347-4025
Fax 1-727-347-1404

Statutory provision on which declaratory statement is sought:

Section 561.42, par. (1) Florida Statutes
- prohibited "gifts or loans of money or property"

I. Description of the potential impact of Section 561.42, (1) Fla. Statute and its
impact upon petitioner Florida Orange Groves, Inc. Specifically, the
interpretation of what constitutes prohibited "gifts or loans of money or
property of any description" by a manufacturer or distributor to a vendor.

Florida Orange Groves, Inc. is a manufacturer and distributor of wine as a
Certified Florida Farm Winery. We are attempting to develop an entirely new
industry for the state of Florida centered on the production of citrus wine. We have
been working closely with the Florida Department of Citrus and the Florida
Department of Agriculture and Consumer Affairs for several years to develop the
products, processes and business infrastructure to facilitate this development. Patents
relating to the production of Florida citrus wine have already been jointly filed with
the U.S. Patent Office by Florida Orange Groves, Inc. and the Florida Department of
Citrus.

The citrus industry has in production 850,000 acres of citrus and is looking for a
value added product for that crop and an answer to an oversupply of grapefruit.
Projections of and presentations to the Florida Department of Citrus show that with a
9% absorption rate (9 glasses out of every 100 glasses of wine consumed in the state)
being a Florida citrus wine that the profits generated would equal those of all the
fresh grapefruit sold by Florida throughout the entire United States and use a
tremendous amount of grapefruit juice. This would result in additional profits to
growers and a huge increase in tax revenue for the state of Florida. Experts feel that
this rate of absorption is achievable within 10 years and are encouraged by
California's absorption rate of 97% and a wine industry valued at around $13 billion.

Citrus and berry wine developed by Florida Orange Groves, Inc. has now won
over 105 medals in national and international competitions in the last 5 years. Our
Florida Pink Grapefruit wine won Best of Show at the 2002 Florida State Fair and Coco Polada (an orange, pineapple and coconut combination) won Best of Show in 2003. In addition, Disney has chosen Florida Orange Groves' Key Lime wine, Coco Polada and Florida Pink Grapefruit wine as the only Florida wines to be featured in the 2001 and 2002 Epcot International Food and Wine Festival.

Since we are prohibited by statute as a manufacturer from operating more than one retail location to sell our wine (with that location mandated as being contingent to our manufacturing facility), we must find alternative ways to bring our product to Florida consumers. Existing distribution channels are unworkable from a marketing perspective, cost prohibitive and have expressed no interest in helping build this new industry. Thus, we are encouraging independent people to open new businesses (special package stores with 2APS licenses) carrying our product. This has already resulted in 5 new Florida businesses opening in the last 3 years. Plans are to continue this until Florida citrus wine is readily available to all consumers in special presentation package stores individually owned and operated and all independent of our manufacturing operation.

To facilitate the development of this new industry, we are asking for an interpretation of prohibited “gifts or loans of money or property of any description” to a vendor by a manufacturer or distributor to be just that – money or property in the ordinary sense of the words. We do not believe that information can or should be construed as money or property. As such, we could then require that a new vendor given specific information by us along with a promise to expand our facilities to accommodate their needs, sign an agreement with our company requiring that new vendor to only purchase wine through our distributorship.

The specific information and consideration that we intend to exchange with a new vendor for a signed agreement to purchase wines solely from our distributorship consists of:

a. A list of our current suppliers of wine accessories and fixtures (currently over 25 different manufacturers or dealers). These suppliers would normally be discernable by the vendor with considerable effort on his part but a concise listing of these particular suppliers, based upon what our experience in the business has been shown to sell, is a quick and easy way for the vendor to purchase from reliable suppliers and to purchase what has a history of selling. This is special information only. Therefore, as information, we do not believe that this qualifies as a “gift” of property or money as prohibited in Section 561.42 (1) Fla. Stat. and as such should be allowed in exchange for requiring a vendor to purchase wine solely from our establishment.

b. Guidance and advice by our company, Florida Orange Groves, Inc., that we deem advisable to assist the vendor in establishing a new retail business, including information as to how and where to apply for licensing. This information is also available to the vendor through normal venues but its concise presentation saves time and confusion. We do not believe that this consideration (guidance and advice) qualifies as a “gift” pursuant to 561.42
c. An expansion of plant and equipment (if necessary) to meet the demands for retail product of the new vendor. Since our capacity to manufacture expands only as proven need develops, in exchange for this possible expansion we would require the vendor to buy wine solely from us. This we believe is not a gift (the expansion of capacity) by us to the vendor but rather an investment by us in our own facilities that allows the vendor to actually go into business as an independent.

d. A limitation restricting the signing of a similar agreement with another vendor within a half mile radius. Again, this is not a gift as it is consideration (neither money nor property) offered to the vendor in exchange for his investment in his own business. It is made clear to the vendor that this in no way restricts our ability or requirement to sell to vendors in general. We simply agree not to share information about products, accessories, licensing and our production capacity with other people within the ½ mile radius. We collect no fees of any kind from the vendor (advertising, franchise, etc.). The agreement can be canceled at any time by the vendor.

Let me thank you and anyone else involved in this decision in advance for your time and attention to this matter. I know that these issues can take a fair amount of time to resolve, especially as to how they relate to our particular circumstances. Please let me know if you need anything more from me as you move towards making your final decision.

Sincerely,

Vincent R. Shook
President
Florida Orange Groves, Inc.

April 18, 2003
SUPPLY AND DISTRIBUTION AGREEMENT

This SUPPLY AND DISTRIBUTION AGREEMENT ("Agreement") is made and entered into this ___ day of ____________, 2003 by and between Florida Orange Groves, Inc. of 1500 Pasadena Avenue South, St. Petersburg, Florida 33707 ("Florida") and ______________________ of ______________________ ("Satellite").

RECITALS

A. The purpose of this Agreement is to establish Satellite as an authorized, retail distributor of the products that Florida either (a) manufactures or (b) distributes in a wholesale capacity.

B. The parties have determined that it is in their mutual best interests to enter into this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties do agree as follows:

1. Recitals and Exhibits. The recitals set forth above are true and correct and are incorporated herein by this reference. In addition, all exhibits attached hereto are incorporated by reference.

2. Term. This Agreement shall commence as of the date first written above and shall continue until terminated as provided herein.

3. Termination.
   (a) ___5__ years from the date first written above, either party may terminate this Agreement, without cause, upon thirty days written notice to the other party.

   (b) If Satellite shall breach any of its obligations hereunder prior to the period ending ___5__ years from the date first written above, Florida may terminate the Agreement upon thirty days notice to Satellite, but only if Satellite has not cured the breach during the notice period.

   (c) Under no circumstances shall Florida's right or election to terminate this Agreement be deemed a waiver of its entitlement to seek other remedies (including damages or injuction) against Satellite in the event of Satellite's breach of this Agreement.

4. Obligations of Satellite. Satellite shall, in consideration for Florida's considerable existing and necessary future investments plus territory grant outlined in paragraph 9 of this Agreement:

   (a) In each of its retail outlets, build, use and maintain a tasting bar of at least ___20___ feet in length for sampling wine by customers. Such tasting bar shall be substantially similar to the tasting bar shown in the photos attached hereto as Exhibit "A".

   (b) Open and maintain one operating retail outlet commencing no later than the date that is six months from the date first written above. The Satellite's retail outlet shall use a separate crate display (substantially similar to the displays shown in the photos attached as Exhibits "B1" and "B2") for each variety of wine sold.

   (c) Satellite agrees and promises to use Florida as its exclusive supplier/wholesaler or alcoholic beverage distributor from which it purchases wine or any other alcoholic beverage.

   (d) Sample customers at no charge at the tasting bar using glassware.
(e) Provide a music system for background music playing primarily island or Jimmy Buffet type tunes.

(f) Provide a lighted display of wines with medals won.

(g) Light individual displays of wine with spotlights.

(h) Maintain the proper display/merchandise balance between wine and other wine accessories and wine merchandise as directed by Florida.

(i) Sell retail no other non-wine or non-winery related merchandise that is not pre-approved by Florida.

(j) Store wine being used for sampling in a refrigerated environment.

(k) Store backup inventory wine in a well air-conditioned and dark environment.

(l) Observe and comply with Florida state statutes that mandate payment for all wholesale alcoholic beverage sales within a 10 day period with no returns of product after a 5 day period.

5. Obligations of Florida. Florida shall:

(a) Sell wine and other alcoholic beverages that its distributorship may acquire to Satellite at the prices set out on Florida's wholesale price list. This price list may be amended from time to time by Florida as it sees fit.

(b) Provide Satellite with a list of suggested wholesale suppliers of retail merchandise (other than alcoholic beverages) and displays that Florida uses to stock and merchandise its winery retail shop.

(c) Provide Satellite with such advice as Florida deems advisable to assist Satellite in establishing its retail business activity, including guidance on alcoholic beverage licensing application procedures and contacts.

(d) Use its best efforts to manufacture sufficient inventory of its products so as to meet Satellite's demand for the products; provided, however, that Florida shall not be responsible for any damage to Satellite in the event that Florida cannot meet Satellite's demand for products.

6. Use of Name. Without express written permission from Florida, Satellite may only use the name "Florida Orange Groves" in connection with standard advertising designed to make the public aware of its sale of Florida's products. Satellite may use "Florida Orange Groves" in its name and/or in store signage such as in attachment N-1.

7. Non-exclusive Sales to Satellite. Nothing herein shall prohibit Florida from selling its products, or from acting as a wholesale wine distributor to any other party.
8. Miscellaneous.

(a) Notice. Any notice, request, instruction or other document to be given hereunder shall be in writing and shall be sent by certified mail, return receipt requested, postage pre-paid to the receiving party at the notice address stated in the preamble of this Agreement. Notices shall be effective upon the date of posting.

(b) Choice of Laws. This Agreement is being delivered and is intended to be performance in the State of Florida and shall be construed and enforced in accordance with the laws of Florida. The forum for any litigation that may arise with regard to this Agreement shall be State Courts located in Pinellas County, Florida.

(c) Entire Agreement and Amendment. This Agreement constitutes the entire Agreement between Florida and Satellite. With respect to the subject matter herein, there are no other agreements, understandings warranties or representations between Florida and Satellite except as set forth in this Agreement. This Agreement may not be amended except in writing executed by both Florida and Satellite.

(d) Waiver. Any waiver by either Florida or Satellite of a breach of any provision of this Agreement by the other party shall not be construed as a waiver of any subsequent breach.

(e) Attorneys Fees. Should either Florida or Satellite institute legal action, whether at law or in equity to enforce any of the provisions hereunder, the prevailing party shall be entitled to receive from the other party all costs and reasonable attorneys’ fees, including but not limited to, fees for trial and appeals of legal proceedings.

(f) Successors and Assigns. This Agreement shall be binding upon and to the benefit of the successors and assigns of both Florida and Satellite. Notwithstanding anything herein to the contrary, neither this Agreement or any right hereunder shall be assignable by Satellite without the prior written consent of Florida. Florida, however, may assign this Agreement without the consent of Satellite.

(g) Construction. Section headings, captions or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Wherever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural and vice versa.

9. Territory. In addition to the investments in manufacturing capacity, inventory, tanks, equipment and personnel necessary to service Satellite plus access to Florida’s list of merchandise and display wholesalers, Florida also grants an “agreement location” defined to be a ½ mile radius circle with the center defined as the address ______________ in the city of ___________ in the state of Florida to Satellite for a period of __5__ years subject to all the other stipulations in this Agreement. This “agreement location” merely defines an area subject to all the other stipulations in this Agreement. This Agreement shall not limit Florida’s rights to, or legal requirements of, distributorship. Florida also grants to Satellite the right of first review of any additional agreement locations in the city of ___________, Florida.
IN WITNESS WHEREOF, Florida and Satellite have executed this Agreement the day and year first written above.

WITNESSES:

Florida Orange Groves, Inc.

By: ________________________________

Vincent R. Shook, President, "Florida"

By: ________________________________

Printed Name: __________________________

Title: _________________________________

"Satellite"