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

IN RE:

PETITION FOR DECLARATORY STATEMENT,
On behalf of Gulf Distributing Co. of Mobile, LLC
and Goldring Gulf Distributing, LLC,

Petitioner.

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Alcoholic Beverages and Tobacco (hereinafter “Division”) pursuant to Section 120.565, Florida Statutes. The Petitioner, Gulf Distributing Co. of Mobile, LLC (hereinafter “Gulf-Mobile”), and Petitioner Goldring Gulf Distributing, LLC (hereinafter “Goldring Gulf”) have filed a Petition for Declaratory statement, containing a statement of facts, and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement is attached hereto and incorporated by reference.

ISSUE PRESENTED

The Petitioners present the following issue to the Division:

Whether an outside parking area contiguous to a Goldring Gulf branch warehouse in Florida that is secure and under the control and supervision of Goldring Gulf employees can qualify to be part of the licensed premises of that branch warehouse provided that written approval from the county or municipality attesting to compliance with local ordinances is submitted to the Division in accordance with Section 561.01(11), Florida Statutes; and whether alcoholic beverages contained in Petitioners’ trailer or trailers parked and stationary for a period of time during the night or early morning hours in a parking lot that is identified as part of a Goldring Gulf licensed branch warehouse premises will meet the come-to-rest requirement of Section 561.5101, Florida Statutes.
FACTS

1. On May 25, 2010, the Petitioners filed with the Division a Petition for Declaratory Statement, thereby giving the Division ninety days to respond from the date of the petition. 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 (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. A summary of the facts stated in the Petition for Declaratory Statement is as follows:

Petitioner, Gulf-Mobile, is a distributor of alcoholic beverages duly licensed by the state of Alabama. Petitioner, Goldring Gulf, is a distributor of alcoholic beverages duly licensed by the state of Florida. Gulf Mobile and Goldring Gulf are wholly owned subsidiaries of Gulf Distributing Holdings, LLC.

Petitioners are engaged in the wholesale distribution of alcoholic beverages in Alabama and Florida, and desire to ship alcoholic beverages from Gulf-Mobile’s main warehouse in Alabama aboard over-the-road relay trucks to licensed warehouse facilities in Florida, for subsequent distribution to licensed retail vendors in Florida.

In an effort to more efficiently distribute alcoholic beverages, Petitioners aim to minimize the amount of inventory sitting in licensed premises at any time by utilizing two or three branch warehouses that will be located somewhat in the center or the distribution grid for a critical population of licensed vendors.

Petitioners plan to unload some of the alcoholic beverages from relay vehicles and temporarily store them in the Florida licensed branch warehouse. However, Petitioners also want to be able to park, in the Florida licensed branch warehouse facility parking lot, over-the-road trailers and double trailers that were preloaded
at Gulf-Mobile's main warehouse for a portion of the night or early morning hours and thereafter taken to licensed Florida vendor locations for delivery.

Petitioners propose that the branch warehouse, including the parking area for those trailers that are preloaded in Mobile for ultimate delivery to licensed vendors in Florida, will be licensed distribution facilities. All alcoholic beverages delivered to the branch warehouse, including product that is unloaded into the branch warehouse and product which remains on the preloaded trailers, will reside and remain stationary on the licensed branch warehouse premises for a period of time during the night or early morning hours.

Petitioners claim that delivery from the branch warehouse facilities will not be any different than delivery from a typical warehouse. Further, Petitioners state that these facilities will house sales and administrative personnel with warehouse space available for the purpose of loading and unloading product, and that all documentation necessary to track the movement of product into and out of the branch warehouse facilities for tax auditing purposes will be maintained in accordance with the Florida Statutes and Division rules and that the branch warehouse licensed premises will be open for inspection and auditing by the Division.

Petitioners believe that the above-describes plan will meet the purposes of inspection and tax revenue control sought to be accomplished through Section 561.5101, Florida Statutes. In addition, relying on Section 561.01(11), Florida Statutes which defines "licensed premises", Petitioners seek the Division's confirmation that the parking area adjacent to the branch warehouse can qualify as a portion of the distributor's licensed premises.

CONCLUSIONS OF LAW

3. The Division has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.08, 561.11, Florida Statutes, and is responsible for the application and enforcement of Chapter 561, Florida Statutes, specifically Sections 561.01(11), Florida Statutes and 561.5101, Florida Statutes.

4. The Petitioner is substantially affected by the statutory provisions cited above and has standing to seek this Declaratory Statement.
5. Section 561.08, Florida Statutes empowers and directs the Division to enforce the provisions of the Beverage Law and perform such acts as may be necessary to carry out the provisions thereof. Pursuant to this authority, the Division is empowered to enforce the provisions of the beverage law and implement the rules necessary to carry out the purpose and intent of the beverage law statutes. 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. The principles of statutory construction require that statutes be given a reasonable interpretation. Therefore, it is the responsibility and duty of the Division to construe and interpret the provisions of Section 561.01(11), Florida Statutes, and 561.5101, Florida Statutes, and apply said provision to a state set of facts in a reasonable manner consistent with the purpose, intent, and spirit of the statutory provisions in order to avoid an absurd, arbitrary, or unreasonable result.

7. The legislative intent is the polestar by which the agency or a court must be guided in interpreting a statutory provision even where reasonable difference may arise to its meaning. 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. If the statute's language is clear and unambiguous, the words given by the legislature are sufficient, and it is unnecessary

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1 Drost v. State Dep't of Envtl Regulation, 559 So.2d 1154 (Fla. 3d DCA 1989).
2 See Towerhouse Condominium, Inc v. Millman, 475 So.2d 674 (Fla. 1983); See also Fletcher v. Fletcher, 573 So.2d 941 (Fla 1st DCA 1991).
4 State Dep't of Envtl. Regulation v. SCM Glidco Organics Corp, 606 So.2d 722 (Fla. 1st DCA 1992).
to rely on the rules of statutory construction or speculate as to what the legislature intended.\(^5\)

8. 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.\(^6\)

**ANALYSIS**

9. Section 561.5101, Florida Statutes, titled “Come-to-rest requirement; exceptions; penalties”, states in relevant part:

For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold pursuant to s 561.221(3), must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler.

10. The above-cited language provides for a requirement and for the purpose of that requirement. In addition, the provision informs where and when the requirement has to be satisfied. However, the above-referenced language of Section 561.5101, Florida Statutes, is ambiguous because it does not contain further textual guidance as to how the requirement should be complied with; i.e., whether the merchandise has to be off-loaded and stored to rest in the licensed warehouse premises of an alcoholic beverage wholesaler, or simply physically come to rest at such premises without necessarily being off-loaded.

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\(^5\) *Zuckerman v Alter*, 615 So. 2d 661 (Fla.1993).

\(^6\) *Storrs v Pensacola & A r Co.*, 11 So. 226 (Fla.1892); *Wilson v Pest Control Com.*, 199 So.2d 777 (Fla.4th DCA 1967); *Baptist Hosp., Inc v State, Dep't of Health and Rehabilitative Services*, 500 So.2d 620 (Fla.1st DCA 1986); *SOS Alford v Sch Bd*, 511 So.2d 438 (Fla.1st DCA 1987).
11. As the textual silence of how the requirement contained in Section 561.5101, Florida Statutes should be met is subject to more than one reasonable interpretation and may permit more than one outcome, application of rules of statutory construction in this case guide to exploration of the legislative history to determine legislative intent.\(^7\)

12. Section 561.5101, Florida Statutes, was created in 1997 by Chapter 97-213. A review of the committee reports\(^8\) for House Bill No. 725 which created Chapter 97-213 indicate that the come to rest requirement “does not require the merchandise to be off-loaded.”\(^9\)

13. The legislative history of Section 561.5101, Florida Statutes, informs that the come to rest requirement could be met without the merchandise being off-loaded. Accordingly, as the merchandise has to come to rest at the “licensed premises of an alcoholic beverage wholesaler”, the place where the merchandise can stay in fulfillment of the “come to rest requirement” without being off-loaded has to be part of the licensed premises.

14. Consequently, considering the entire legislative scheme of which Section 561.01(11), Florida Statutes, is part and the general purpose and intent by which Section

\(^7\) *JPG Enterprises, Inc. v. McEllan*, 31 So.3d 821 (Fla.4th DCA, 2010); *E.A.R. v. State*, 4 So.3d 614 (Fla. 5th DCA, 2009); *Nicarry v. Eslinger*, 990 So.2d 661 (Fla. 5th DCA, 2008); *Anderson Columbia v. Brewer*, 994 So. 2d 419 (Fla.1st DCA, 2008);

\(^8\) CS/HB 725, Committee on Regulated Services - Bill Analyses and Economic Impact Statement, p. 4, March 18, 1997; CS/HB 725, Committee on Regulated Services - Bill Analyses and Economic Impact Statement, p. 4, March 20, 1997; CS/CS/HB 725, Committee on Governmental Rules and Regulations - Bill Research and Economic Impact Statement, p. 4, April 4, 1997; CS/CS/HB 725/1\(^{st}\) Engrossed, Committee of Regulated Services - Final Bill Research and Economic Impact Statement, p. 5, May 21, 1997.

\(^9\) Id.
561.5101, Florida Statutes, is animated, the definition of "licensed premises" has to be construed to produce a harmonious whole.

15. Section 561.01(11), reads in relevant part:

"Licensed premises means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building...over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk or other outside area which is contiguous to the licensed premises. When the sketch includes a sidewalk or other outside area, written approval from the county or municipality attesting to compliance with local ordinances must be submitted to the division to authorize inclusion of sidewalks and outside areas in licensed premises."

CONCLUSION

16. Finally, construing the above-referenced definition of "licensed premises" in harmony with the spirit of Section 561.5101 Florida Statutes, as well as the context of the legislative purpose in which it was intended to function, and based upon the facts presented by Petitioner, research done by the Division, and the legal conclusions set forth in full herein, the Division declares that:

(1) an outside parking area contiguous to a Goldring Gulf branch warehouse that is duly licensed in Florida in accordance with the Florida Statutes and Division rules, and that is secure and under the control and supervision of Goldring Gulf employees can qualify to be part of the licensed premises of that branch warehouse provided that written approval from the county or municipality attesting to compliance with local ordinances is submitted to the Division in accordance with Section 561.01(11), Florida Statutes; and
(2) so long as the required documentation, for purposes of inspection and tax-revenue control, is duly complied with in accordance with the Florida Statutes and Division rules, malt beverages contained in Petitioners' trailer or trailers parked and stationary for a period of time during the night or early morning hours in a parking lot that is identified as part of a Goldring Gulf licensed branch warehouse premises will meet the come-to-rest requirement of Section 561.5101, Florida Statutes.

17. This conclusion is based on the facts described in the Petitioner’s Petition for Declaratory Statement 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 20 day of July, 2010.

John R. Powell, Director
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
BEFORE THE FLORIDA DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

In re: Petition of Gulf Distributing Co. of
Mobile, LLC and Goldring Gulf Distributing,
LLC for a Declaratory Statement.)

DS 2010-040

PETITION FOR DECLARATORY STATEMENT

Petitioners, Gulf Distributing Co. of Mobile, LLC and Goldring Gulf Distributing, LLC,
by and through their undersigned attorneys and pursuant to Section 120.565, Florida Statutes,
and Chapter 28-105, Florida Administrative Code, petition the State of Florida, Department of
Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("the
Division") for a declaratory statement, and in support thereof, say:

Introduction

1. Petitioner, Gulf Distributing Co. of Mobile, LLC (hereinafter "Gulf-Mobile"), is a
distributor of alcoholic beverages duly licensed by the state of Alabama. The address of Gulf-
Mobile's principal offices, its telephone number and facsimile number are as follows:

   3378 Moffett Road
   Mobile, Alabama 36607
   (251) 476-9600
   (251) 476-6472 (facsimile)

2. Petitioner, Goldring Gulf Distributing, LLC (hereinafter "Goldring Gulf"), is a
distributor of alcoholic beverages duly licensed by the state of Florida. The address of Goldring
Gulf's principal offices, its telephone number and facsimile number are as follows:

   675 South Pace Boulevard
   Pensacola, Florida 32501
   (850) 432-9883
   (850) 432-5509 (facsimile)
3. Goldring Gulf has duly licensed warehouses located in Pensacola, Ft. Walton and Panama City, Florida. Gulf-Mobile and Goldring Gulf are wholly owned subsidiaries of Gulf Distributing Holdings, LLC, whose address, telephone number and facsimile number are as follows:

3378 Moffett Road  
Mobile, Alabama 36607  
(251) 476-9600  
(251) 476-6472 (facsimile)

4. Petitioners are engaged in the wholesale distribution of alcoholic beverages in Alabama and Florida. In an effort to more efficiently distribute alcoholic beverages, Petitioners desire to ship alcoholic beverages from Gulf-Mobile's main warehouse in Alabama aboard over-the-road relay trucks to licensed branch warehouse facilities in Florida, for subsequent distribution to licensed retail vendors in Florida.

5. A branch warehouse facility is a facility located somewhat in the center of the distribution grid for a critical population of licensed vendors. Petitioners expect to utilize two or three branch warehouses to carry out this plan. The branch warehouse facilities will not be large distribution centers. These facilities will house sales and administrative personnel with warehouse space available for the purpose of loading and unloading product from relay vehicles as necessary. The purpose of the branch warehouse facility is to minimize the amount of inventory sitting in a licensed premise at any time.

6. Beer purchased by Goldring Gulf for distribution to retailers in Florida will first be shipped by the manufacturer to Gulf-Mobile’s main warehouse in Alabama. From there, it will be loaded onto trailers and shipped to Goldring Gulf’s branch warehouses in West Florida. Some of the alcoholic beverages received at the branch warehouse will be unloaded from relay vehicles and temporarily stored in the branch warehouse, then loaded onto route vehicles for
delivery to licensed vendors in west Florida. Petitioners also plan to preload some over-the-road trailers and double trailers at Gulf-Mobile's main warehouse and transport those trailers to the branch warehouses in Florida. There they will be parked in the Florida licensed branch warehouse facility parking lot for a portion of the night or early morning hours and thereafter taken to licensed Florida vendor locations for delivery.

7. Delivery from the branch warehouse facilities will not be any different than delivery from a typical warehouse. Drivers will check in each morning, complete the appropriate paperwork, and make their deliveries to licensed vendors. When drivers return in the evening, check-in will be the same as if they were checking into the main warehouse. Drivers' supervisors will check appropriate paperwork. Drivers will finish their end-of-day paperwork and leave for the day. Relay return drivers will arrive at the branch warehouse facility and return the empty over-the-road relay vehicles to the main warehouse in Mobile, Alabama.

8. Petitioners propose that the branch warehouses, including the parking area for those trailers that are preloaded in Mobile for ultimate delivery to licensed vendors in Florida, will be licensed distribution facilities. All alcoholic beverages delivered to the branch warehouses, including product that is unloaded into the branch warehouse and product which remains on the preloaded trailers, will reside and remain stationary on the licensed branch warehouse premises for a period of time during the night or early morning hours.

9. All documentation necessary to track the movement of product into and out of the branch warehouse facilities for tax auditing purposes will be maintained in accordance with the Florida Statutes and Division rules. The branch warehouse licensed premises will be open for inspection and auditing by the Division.
10. The purpose of this petition is to obtain the Division's confirmation that the above-described plan for using branch warehouses in order to more efficiently distribute alcoholic beverages in the Florida panhandle comports with the Beverage Law and the Division's implementing rules.

**Law on which a Declaratory Statement is Sought**

10. A declaratory statement is sought with respect to Section 561.5101, Florida Statutes, and Section 561.01(11), Florida Statutes.

**Discussion**

11. Section 561.5101, Florida Statutes, commonly referred to as the "come-to-rest law", requires the following:

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold pursuant to s. 561.221(3), must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity.

12. Petitioners believe the above-described plan will meet the purposes of inspection and tax revenue control sought to be accomplished through Section 561.5101. All alcoholic beverages shipped to the branch warehouses will become stationary within the distributor's licensed branch warehouse for a period of time during the night or early morning hours, including product that is unloaded into the branch warehouse as well as product that remains on the preloaded trailers. All product shipped to the branch warehouse will have appropriate arrival
and departure documentation fully compliant with the Beverage Law and the Division's rules to support the Division's inspection and auditing functions.

13. Petitioners also seek the Division's confirmation that the parking area adjacent to the branch warehouse can qualify as a portion of the distributor's licensed premise. The parking area will be secure and under the control and supervision of Goldring Gulf employees. In this regard, Section 561.01(11) defines "licensed premises" to include not only buildings, but also "... all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law." Subsection (11) goes on to state:

The area embraced within the sketch may include a sidewalk or other outside area which is continuous to the licensed premises. When the sketch includes a sidewalk or other outside area, written approval from the county or municipality attesting to compliance with local ordinances must be submitted to the division to authorize inclusion of sidewalks and outside areas in licensed premises. . . .

Impact on Petitioners' Particular Set of Circumstances

14. The above statutes and the manner in which they are interpreted by the Division will substantially affect Petitioners' particular set of circumstances in that Petitioners' ability to implement the proposed use of branch warehouses in the manner described herein in Goldring Gulf's west Florida service territory will be directly impacted, either positively or negatively, by the Division's disposition of this petition.

Relief Requested

15. Petitioners respectfully request that the Division issue a declaratory statement that:
(a) An outside parking area contiguous to a Goldring Gulf branch warehouse in west Florida that is secure and under the control and supervision of Goldring Gulf employees can qualify to be part of the licensed premises of that branch warehouse provided that written approval from the county or municipality attesting to compliance with local ordinances is submitted to the Division in accordance with Section 561.01(11), Florida Statutes; and

(b) Alcoholic beverages contained in Petitioners' trailer or trailers parked and stationary for a period of time during the night or early morning hours in a parking lot that is identified as part of a Goldring Gulf licensed branch warehouse premises will meet the come-to-rest requirement of Section 561.5101, Florida Statutes.

DATED this 25th day of May 2010.

Respectfully submitted,

JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115
(850) 222-7560 (Facsimile)

ATTORNEYS FOR PETITIONERS
Ms. Ronda Bryan  
The Agency Clerk  
Department of Business and  
   Professional Regulation  
Division of Alcoholic Beverages and Tobacco  
1940 North Monroe Street - Suite 33  
Tallahassee, FL 32399

Re: Petition of Gulf Distributing Co. of Mobile, LLC and Goldring Gulf Distributing, LLC for a Declaratory Statement

Dear Ms. Bryan:

Enclosed is the original of Gulf Distributing Co. of Mobile, LLC and Goldring Gulf Distributing, LLC's Petition for Declaratory Statement.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp  
Enclosure

cc: Debi Pender (w/enc.)  
    Michael Martinez (w/enc.)  
    Elliot Maisel (w/enc.)  
    JR Ebbitt (w/enc.)