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

IN RE: PETITION FOR DECLARATORY STATEMENT,
on behalf of SEGA GAMEWORKS L.L.C.,
a Limited Liability Company, Final Order No. BPR-97-03610 Date 4-12-97
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, Fla. Stat. The Petitioner, SEGA GAMEWORKS L.L.C., a limited liability company, ("GAMEWORKS") has filed a Petition for Declaratory Statement, containing Exhibits A through F. GAMEWORKS asks whether Sections 561.22 and 561.42(1), Fla. Stat., are applicable to its proposed operation in Florida.

FINDINGS OF FACT

1. On or about February 26, 1997, the DIVISION received a Petition for Declaratory Statement filed by GAMEWORKS, regarding its proposed operation in Florida. The DIVISION renders its Findings of Fact on the basis of the information contained in the Petition for Declaratory Statement and Exhibits A through F, attached thereto.

2. GAMEWORKS is a limited liability company formed for the purpose of
developing and operating state-of-the-art location-based entertainment centers in Florida, among other states. GAMEWORKS proposes to develop and construct several entertainment centers throughout the State of Florida primarily in highly populated and high tourist areas. One entertainment center is proposed to be constructed within the vicinity of Universal Studios Florida located in Orlando, Florida. Additional entertainment centers are anticipated to be built in Broward, Dade and other counties. Accordingly, GAMEWORKS has requested that its Petition be considered by the DIVISION to apply to each entertainment center to be developed in the state.

3. GAMEWORKS entertainment centers will offer patrons interactive attractions along with the arcade games developed by SEGA ENTERPRISES, LTD. ("SEGA") and other manufacturers. The entertainment centers will offer food, alcoholic beverages and merchandise, the sale of which will be incidental to the primary business of GAMEWORKS. In that GAMEWORKS intends to offer alcoholic beverages to its customers, an application for an alcoholic beverage vendor license will be filed with the DIVISION in the near future.

4. Each GAMEWORKS location will have its own security team which will be readily identifiable. Every GAMEWORKS center will contain three distinct areas:

(1) The "Loading Dock": A high energy area in which the newest arcade games will be featured.

(2) The "Arena": A high intensity communal area in which proprietary simulation and multi-player games will be featured. For example, in the game "Vertical Reality" four players will compete in a blazing vertical challenge game. Strapped
into seats which can climb to heights of 24 feet, players will race the clock, ascending as they succeed, and descending as they fail. Video cameras strategically mounted in the Arena will capture selected winners, projecting their faces on up to twelve 6-foot screens that will surround the area.

(3) The “Loft”: A more subdued environment where players can relax and meet others either online or face-to-face. The Loft will offer more traditional games as well as a variety of food, non-alcoholic and alcoholic beverages. More specifically, a dining area in the Loft will offer table service and specialty foods including gourmet pizzas. Soft drinks and other popular non-alcoholic beverages, such as iced teas and bottled water, and alcoholic beverages including beer, wine and spirits also will be served. A coffee bar will often be featured as well.

5. GAMEWORKS is a collaboration among SEGA, DREAMWORKS, SKG, (“DREAMWORKS”) and UNIVERSAL STUDIOS, INC. (“USI”). Prior to December 9, 1996, USI was named MCA, INC. SEGA, USI and DREAMWORKS have invested in GAMEWORKS through their respective wholly owned subsidiaries, i.e., SEGA ENTERPRISES, INC. (“SEGA-U.S.A.”), UNIVERSAL STUDIOS ARCADE, INC. (“USA”) and DREAMWORKS ARCADE, L.L.C. (“DREAM-ARC”). SEGA, USI and DREAMWORKS are the chief investors in GAMEWORKS with SEGA holding a 41.89 percent interest; USI holding a 30.57 percent interest; and DREAMWORKS holding an 11.69 percent interest. There also are a number of individual and other investors with small non-voting holdings, as indicated by the organizational chart, which was submitted as Exhibit C.
6. DREAMWORKS, a multifaceted entertainment company, was formed in October of 1994 by Steven Spielberg, Jeffery Katzenberg and David Geffen to create motion pictures and animated films; network, syndicated and cable television programming; a record company; interactive entertainment ventures; and a toy company.

7. USI (formerly MCA) is in the entertainment industry engaged in production and distribution of theatrical, television and home video products; production and distribution of recorded music and music publishing; merchandising of a wide variety of entertainment-related products; operation of theme parks (i.e., Universal Studios Hollywood and Universal Studios Florida) and amphitheaters; production and distribution of interactive entertainment software; retailing and real estate development.

8. The SEAGRAM COMPANY, LTD. ("SEAGRAM") is a producer and marketer of distilled spirits, wines, fruit juices, coolers and mixers, headquartered in Montreal.

9. On June 5, 1995 SEAGRAM acquired an 80 percent interest in USI for 5.4 billion dollars. The other 20 percent interest in USI was retained by MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., the sole stockholder in USI prior to SEAGRAM's acquisition. At the time of SEAGRAM's acquisition of its interest in USI, USI's principal assets included UNIVERSAL PICTURES, MCA TELEVISION GROUP, MCA MUSIC ENTERTAINMENT GROUP, PUTNAM PUBLISHING GROUP, UNIVERSAL STUDIOS HOLLYWOOD, and a half interest in UNIVERSAL STUDIOS FLORIDA, as well as an interest of approximately 50 percent in USA NETWORK, and an interest of approximately 40 percent in the CINEPOLEX ODEON chain of theaters.
10. JOSEPH E. SEAGRAM AND SONS, INC. ("JES") is a wholly owned subsidiary of SEAGRAM and is primarily responsible for the production, and/or importation and sale of distilled spirits, wines and malt beverages on behalf of SEAGRAM in the United States. JES, an Indiana corporation, is headquartered in New York and distributes alcoholic beverages in the State of Florida through wholesalers located in the state and licensed by the DIVISION.

11. SEAGRAM owns or controls an 80 percent interest of its subsidiary, USI, which would own or control a 30.57 percent of GAMEWORKS through a subsidiary. Essentially, SEAGRAM would have a 24.46 percent controlling interest in GAMEWORKS. USI also owns and controls, or has an interest in, numerous subsidiaries and affiliates and is responsible for the day-to-day operation and management of the USI film, television, music and related businesses.

12. The sole purpose for SEAGRAM’s acquisition of USI was to diversify in the entertainment industry and to enhance its future growth and profit potential. SEAGRAM did not acquire USI for the purpose of obtaining an interest in, or a connection, or affiliation with, a Florida alcoholic beverage vendor; however, as a result of SEAGRAM’s acquisition of USI, it acquired a remote interest. A USI wholly owned subsidiary, UNIVERSAL CITY PROPERTY MANAGEMENT CO. ("UCPM"), is a partner in UNIVERSAL CITY FLORIDA PARTNERS ("UCFP"), a general partnership that owns and operates UNIVERSAL STUDIOS FLORIDA ("USF") and in that capacity holds an alcoholic beverage vendor license. Accordingly, SEAGRAM became remotely connected with an alcoholic beverage vendor (UCFP) through USI’s ownership of UCPM, an equal partner in UCFP.

13. In light of the remote connection between SEAGRAM and UCFP, SEAGRAM
and UCFP filed a petition for a declaratory statement ("STATEMENT") with the DIVISION in March of 1996 seeking a declaration as to the applicability of Sections 561.22 and 561.42(1), Florida Statutes, to the relationship between SEAGRAM and UCFP.

14. On April 8, 1996, the DIVISION rendered its STATEMENT, after conducting an extensive legal analysis. The DIVISION found that the remote connection between SEAGRAM and UCFP was not prohibited under Sections 561.22 and 561.42(1), Florida Statutes. More importantly, the DIVISION's STATEMENT was predicated upon the following factors:

(1) The primary business of UCFP was not the sale of alcoholic beverages;
(2) The operation of UCFP was not and could not be controlled by SEAGRAM;
(3) UCFP was neither obligated nor committed to purchase or promote SEAGRAM products;
(4) Neither SEAGRAM nor JES was or would be in the future involved, directly or indirectly, in the day-to-day operation of UCFP;
(5) The officers and directors of SEAGRAM and JES did not and would not in the future serve as officers or directors of UCFP; and
(6) No more than 20 percent of the combined annual total of all alcoholic beverages (measured by gallons) purchased by UCFP would be produced by SEAGRAM or JES.

15. In this instance, USA, a wholly owned subsidiary of USI, holds only a 30.57 percent interest in GAMEWORKS. SEGA holds a 41.89 percent interest and DREAMWORKS holds a 11.69 percent interest. The remaining interests are held by a number of individual investors. Accordingly, SEAGRAM, through USA, cannot control the operation of GAMEWORKS. SEAGRAM's remote connection with GAMEWORKS is of a significantly
lower magnitude than is its connection with UCFP. Whereas USI is the sole stockholder in UCPM, which holds a 50 percent interest in UCFP, USA only holds a 30.57 percent interest in GAMEWORKS. Moreover, because USI is not a wholly owned subsidiary of SEAGRAM, SEAGRAM's very remote connection with GAMEWORKS amounts only to an approximate 24 percent interest. (80 percent of 30 percent) This interest is significantly lower than SEAGRAM's interest in UCFP, which the DIVISION has previously concluded was not prohibited by Sections 561.22 and 561.42(1), Florida Statutes.

16. In addition, USA is in the same position in the USI corporate structure chain as is UCPM, i.e., both are wholly owned subsidiaries of USI. As with UCPM, USA cannot control the entity holding the alcoholic beverage license. In this case GAMEWORKS, the proposed retail licensee, as in UCFP, there are no officers or directors which are also officers and directors of SEAGRAM. (As part of its petition, GAMEWORKS submitted lists of the Officers and Directors of both SEAGRAM and GAMEWORKS, as Exhibits E and F, respectively.)

17. Finally, the day-to-day operations of GAMEWORKS are and will be supervised and managed by an independent group of officers, which have been identified in Exhibit F. These officers are not affiliated with, employed by, or in any way financially obligated to SEAGRAM or USI. Inasmuch as GAMEWORKS is a limited liability company, its policy decisions are determined by a management committee similar to a board of directors. No member of the management committee is employed by or financially obligated to SEAGRAM. Only two of the nine members of the committee, Glenn Gumpel and Brian C. Mulligan, are employed by or affiliated with USI. No officer or director of SEAGRAM, or of any wholly
owned subsidiary or affiliate, will serve as an officer of GAMEWORKS or a member of its management committee.

18. The management committee is composed of nine members and under the terms of the GAMEWORKS limited liability company agreement, all decisions of the management committee must be made by majority vote, with some decisions requiring greater than a simple majority vote. Accordingly, USI simply cannot dictate policy to the management committee, nor can USI control any of the decisions of the management committee.

19. Like UCFP, GAMEWORKS is operated and managed independently from SEAGRAM and, as described above, will be free from the control or interference of SEAGRAM with respect to its ability to make choices as to the types, brands and quantities of alcoholic beverages to purchase, which purchases will be based on consumer demand, availability and/or prices. GAMEWORKS, like UCFP, also will be free from the control or interference of SEAGRAM in the selection of the distributors or distributors from which it will purchase alcoholic beverages and will be free to make all decisions regarding the promotion, purchase, display and pricing of such beverages.

20. Like UCFP, GAMEWORKS will neither be obligated nor committed to purchase or promote SEAGRAM products and it is willing to ensure that no more than 20 percent of its combined annual total of all alcoholic beverages (measured by gallons) purchased for any entertainment center to be located in Florida will be produced by SEAGRAM. Moreover, the sale of alcoholic beverages will be a minor ancillary aspect of GAMEWORKS entertainment center; it is anticipated that the sale of alcoholic beverages at any center in Florida will amount to
less than 5 percent of the total revenues produced at that center.

21. For all the aforementioned reasons, USI’s investment in GAMEWORKS does not afford SEAGRAM the opportunity, as a result of its remote connection to GAMEWORKS, to (i) control alcoholic beverage prices, (ii) gain a competitive advantage over other retail vendors; or (iii) coerce GAMEWORKS into giving preference to SEAGRAM products.

22. GAMEWORKS has also stated that no other investor in GAMEWORKS holds a controlling interest in any alcoholic beverage manufacturer.

CONCLUSIONS OF LAW

23. The DIVISION has jurisdiction over this matter pursuant to Sections 120.565, 561.02, 561.22 and 561.42, Fla. Stat.

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

25. Section 561.08, Fla. Stat., 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.

26. 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. Storr's 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).

27. 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.

28. 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).

29. 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
Probation Com'n, 473 So. 1248, (Fla. 1985).

30. However, of equal importance is the well established principal that a statute
should be interpreted so as to avoid arbitrary, absurd 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).

31. 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).

32. 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, Department of Environmental Regulation v. SCM, Glidco Organics Corp.*, 606 So.2d 722 (Fla. 1st DCA 1992).

33. Section 561.22(1), Fla. Stat., states in pertinent part as follows:

... a license or registration may not be issued to a manufacturer, distributor or exporter as a vendor, ... (Emphasis supplied.)

34. Section 561.22 (2) (b) 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 as set 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. (Emphasis supplied).

35. Section 561.22(3) 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 beverage ... 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.

36. Under Section 561.22(3), Fla. Stat., in order for a prohibited connection or affiliation to exist between an applicant for a vendor’s license and a manufacturer of alcoholic beverages because of stock ownership, the applicant must be controlled by the manufacturer through the stock ownership, or the applicant must be 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.

37. Based upon the application of such legal analysis to the facts and circumstances presented herein, USI’s interest in GAMEWORKS does not give SEAGRAM the opportunity to control the management or operation of a retail vendor establishment, to control the decisions of the vendor regarding the sale of alcoholic beverages, or to control in any way the decisions of the vendor as to the alcoholic beverage products it will sell. Accordingly, inasmuch as SEAGRAM will not and cannot control GAMEWORKS, either directly or indirectly, and does not have a controlling interest in GAMEWORKS through stock ownership, or otherwise, the remote connection between SEAGRAM and GAMEWORKS does not violate the provisions of Section 561.22, Fla. Stat.

38. Section 561.42(1), Fla. Stat., states in pertinent part as follows:

... No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor shall such licensed manufacturer or distributor assist any vendor by any gifts or loans of money or property or property of any description ... (Emphasis supplied.)
39. 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. Meicklejohn, 596 F.2d 638 (5th Cir. 1979). Likewise, the statute was enacted to prevent distributors from having a financial interest in or controlling retail outlets. Central Florida Distributing Co. v. Jackson, 325 So.2d 143 (Fla. 1st DCA 1975); Musleh v. Fulton Distributing Co. of Fla., 254 So.2d 815 (Fla. 1st DCA 1971).

40. There has been no Florida court decision determining the applicability of Section 561.22 and Section 561.42 to a factual situation similar to this case. However, both state and federal courts construing Florida's “tied-house evil” provisions have provided guidance as to the purpose and intent of said statutory provisions and as to how the Division should construe and apply these provisions.

41. In Pickerill v. Schott, 55 So.2d 716 (Fla. 1951), the Florida Supreme Court 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 retail and wholesale outlets and to remove the retail dealer in intoxicating liquors from financial or business obligations to the wholesaler, with the exception of ordinary commercial credit for liquors sold. The court traced the then 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. As discussed above, these purposes are not compromised by the formation of GAMEWORKS, in which SEAGRAM'S has a minority in.

42. Prior to the decision by the Florida Supreme Court in Pickerill v. Schott, the
Florida Supreme Court decided the case of *State ex rel. Continental Distilling Sales Co. v. Vocelle*, 27 So.2d 728 (Fla. 1946), where the 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.

43. In *Continental Distilling Sales*, 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 brought an action against the Director of the Beverage Division to compel the issuance of a license as a wholesale distributor of liquor. Through separate corporate entities and stock ownership, Continental Distilling Corporation, a manufacturer of liquors, was related to a retail vendor of liquors. The court refused to apply the subject statutes by opining that the corporations were legal entities by fiction of law and 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 Publiicker Industries, Inc.

44. 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. See for example *Bohemian Breweries v. Köehler*, 332 P.2d 875 (S.Ct.Idaho, 1958).

45. In *Joseph Schlitz Brewing Co. v. Central Beverage Co., Inc.*, 359 N.W. 2d 566
(Court of Appeals, Ind. 1977) the court construed a statute making it unlawful for the holder of brewers permit, to hold, acquire, posses, own or control, or to have and 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.

46. Likewise, in Illinois, the courts have opined that the purpose of the tied-house evil law is to keep liquor distillers separate from liquor distribution, thus preventing horizontal and vertical integration of the industry. Wine and Spirits Merchandisers, Inv. v. Illinois Liquor Control Commission, 432 N.E. 2d. 1013 (Illinois 1982).

47. The court in Markstein Distributing Company v. Rice, 135 Cal. RPTR. 255 (1976) adequately sums up the purpose of prohibitions against tied-house arrangements to be the prevention of large firms from dominating local markets through vertical and horizontal integration and the excess sales of alcoholic beverages produced by the overly aggressive marketing techniques of larger alcoholic beverage concerns. Such evil cannot exist in the case at bar.

48. The State of Ohio has enacted statutory prohibitions similar to those contained within Sections 561.22 and 561.42, Fla. Stat. SEAGRAM’s requested an opinion by the Department of Liquor Control, State of Ohio, (“ODLC”) regarding the effect of its purchase of an interest in MCA, the owner of certain entities having retail beverage licenses. The ODLC
concluded that the provisions of its alcoholic beverage code would not be violated as long as there was independent operation between SEAGRAM, MCA and the remotely affiliated retail vendor. In order to insure no inter connection between the various entities, ODLC directed that any individuals in the management of SEAGRAM and MCA subsidiaries operating in Ohio, who also sit on the Board of Directors of SEAGRAM, should not be involved in the decisions of SEAGRAM affecting Ohio operations with respect to the sale of alcoholic beverages. Likewise, the actual alcoholic beverage retailer should avoid giving preference to SEAGRAM products or excluding non-SEAGRAM products in the operation of its retail business.

49. Similarly, the Liquor Enforcement Division of the State of Colorado ("CLED"), concluded that the interest of SEAGRAM in MCA did not create a Colorado tied-house issue provided that the retail licensee was allowed to make its own independent decisions.

50. Most importantly, when the DIVISION was subsequently asked by SEAGRAM to declare whether its acquisition of an interest in MCA violated the tied-house evil prohibition, the DIVISION found that it did not. See the Declaratory Statement issued by the DIVISION on April 8, 1996.

51. As indicated by the facts, the existing GAMEWORKS/SEAGRAM corporate structure does not violate the spirit and intent of Sections 561.22 and 561.42, Fla. Stat. In every state where the courts have had the occasions 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.

52. 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.

53. Again, the Central Florida Distributing Co. v. Jackson, 324 So.2d 143, the court opined 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. 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 Distributing Co. of Florida, 254 So.2d 815, 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.

54. Section 561.22(1)(b), Fla.Stat., recognizes that remote affiliations or connections between manufacturers and vendors because of stock ownership, are not necessarily prohibited. Instead the statute recognizes that for the connection to be a prohibited connection because of stock ownership, the applicant for the vendor license must be controlled by or the majority stock therein owned by another corporation or entity, which latter corporation owns or controls in
anyway the majority stock or controlling interest in any other corporation that is engaged, directly or indirectly, in manufacturing alcoholic beverages.

55. Under the facts as stated in the Petition, neither SEAGRAM nor any of its subsidiaries control the operation and management of GAMEWORKS. Furthermore, neither SEAGRAM nor its subsidiaries can control the GAMEWORKS’ decision making process regarding the dispensing of alcoholic beverages at its proposed Florida locations. Specifically, neither SEAGRAM nor its subsidiaries can control which alcoholic beverage brands are to be sold at a GAMEWORKS facility.

56. There also does not exist any vertical integration by SEAGRAM into the operation of GAMEWORKS. SEAGRAM is merely indirectly connected because of its ownership interest in USI (formerly MCA). This is not the vertical integration which the legislature determined to prohibit.

57. To prohibit the very remote connection between SEAGRAM and GAMEWORKS under the facts alleged in the Petition for Declaratory Statement would produce an unreasonable result never contemplated by the Florida Legislature. An incidental connection between a manufacturer of alcoholic beverages and a vendor, where the vendor is not controlled by the manufacturer and the vendor is not financially obligated to the manufacturer, does not create an evil that was intended to be prohibited under Section 561.22 or Section 561.42, Fla. Stat.

CONCLUSION

58. Based upon the specific facts presented by the Petitioner, GAMEWORKS, and the legal conclusions set forth above,
THE DIVISION HEREBY CONCLUDES:

A. That Sections 561.22 and 561.42, Fla. Stat., do not apply to the connection among SEAGRAM, USI and GAMEWORKS by reason of SEAGRAM's ownership interest in USI; and.

B. That this conclusion is based upon the corporate structures described in the Petitioner's Petition for Declaratory Statement, with exhibits, and the particular factual assertions described therein. Accordingly, this conclusion has no application in the event the factual circumstances and/or relationships among the entities described herein change; and.

C. That for a period of three calendar years after the entry of this declaratory statement, Petitioner and/or a parent or related company or subsidiary, on its behalf will file annually on or before January 31st an affidavit which establishes that (i) the above described facts and circumstances still exist and, (ii) to the extent relevant information is available to it, discloses to the DIVISION the percent which alcoholic beverage products produced by SEAGRAM make up of the total of all alcoholic beverage products purchased by Petitioner during the previous calendar year.

DATED this 14 day of April, 1997.
RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH LOIS WILLIAMS, CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 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, et al., Highpoint Center, Suite 1200, 106 East College Avenue, Tallahassee, FL 32301, this 17th day of April, 1997.

Sarah Wachman
Sarah Wachman, Agency Clerk