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

IN RE:

PETITION FOR DECLARATORY STATEMENT BEFORE
THE FLORIDA DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION, DIVISION OF
ALCOHOLIC BEVERAGES AND TOBACCO,

On behalf of WAWA, INC.,

Petitioner.

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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, Wawa, Inc. (hereinafter “Wawa”), 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 is attached hereto and incorporated by reference.

ISSUE PRESENTED

The Petitioners present the following issue to the Division:

Whether Florida’s Beverage Law requires Wawa, Inc., a corporation planning to apply for and obtain multiple 2-APS alcoholic beverage licenses in the State of Florida, to obtain and submit fingerprints from trustees and beneficiaries of trusts that hold more than a 0.5% interest in the corporation.

FACTS

1. On February 2, 2011, Petitioner 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:

Wawa, Inc. is a privately held New Jersey corporation duly authorized to transact business in the State of Florida, and has its principal place of business in Wawa, PA. Wawa does not currently hold any type of alcoholic beverage license in the State of Florida.

Wawa operates over 500 convenience stores in New Jersey, Pennsylvania, Delaware, Maryland and Virginia, and proposes to begin doing business in Florida in 2012. Wawa plans to include alcoholic beverages among the products it sells, and anticipates acquiring the necessary 2-APS licenses to permit the sale of package beer and wine at its Florida stores.

Wawa currently has almost 300 shareholders, some of which hold more than a 0.5% interest in the corporation. Among these shareholders are several trusts, including an employee stock ownership plan trust. Each trust has numerous beneficiaries, though the percentage interest of each beneficiary in each trust is yet unspecified.

In its proposed business model, Wawa plans to submit applications for alcoholic beverage licenses without providing personal information or fingerprints from the beneficiaries of the aforementioned trusts, and currently seeks an opinion thereon.

**CONCLUSIONS OF LAW**

1. 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 Chapters 561, Florida Statutes, specifically Section 561.17(1), Florida Statutes.
2. 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.

3. Petitioner Wawa is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

4. Section 120.565, Florida Statutes, provides:

Any substantially affected person may seek a declaratory statement regarding an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner’s particular set of circumstances.

4. Rule 28-105.001, F.A.C., provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. Section 561.17(1), Florida Statutes, provides:

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. [...] Prior to any application is approved, the division may require the applicant to file a set of fingerprints on regular United States Department of Justice forms
for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division.

6. Rule 61A-2.014, F.A.C., provides:

The following persons or entities as described below shall file a set of fingerprints at the time of making application for a beverage license or at the time an interest is created after a license has been issued:

[...]

(5) All stockholders with an interest in the corporation holding an alcoholic beverage license which is greater than .5 percent except when:

[...]

(d) The stock is in a parent corporation owning stock in a corporation holding or seeking to hold an alcoholic beverage license. Any corporation holding stock in the corporation holding or seeking to hold an alcoholic beverage license must, however, be disclosed on the application and is subject to the provisions of subsection (8) of this rule.

(6) All directors or officers of a corporation with an interest in an alcoholic beverage license except when:

[...]

(d) The directors or officers are of a corporation owning stock in a corporation holding or seeking to hold an alcoholic beverage license. Any directors or officers of a corporation owning stock in a corporation holding or seeking to hold an alcoholic beverage license must, however, be disclosed on the application and are subject to the provisions of subsection (8) or this rule.

[...]

(8) Should the Division have any articulable suspicion that a person with a direct or indirect interest in an alcoholic beverage license other than described above or who is required to be disclosed on the application has a criminal record precluding licensure in accordance with Section 561.15, Florida Statutes, the Division may require that person to supply fingerprints as a condition of licensure or of maintaining the license.
7. Under authority from Rule 61A-2.012, Subsection (8), F.A.C., the Division traditionally likens trusts to corporations with respect to Subsections (5) and (6). As such, the Division requires disclosure of qualifying trusts and their controlling parties, but does not necessarily require fingerprints and detailed personal information.

8. Under authority from Rule 61A-2.012, Subsection (8), F.A.C., the Division may still require fingerprints from any person with a direct or indirect interest in an alcoholic beverage license — including the aforementioned trusts, trustees and beneficiaries — should it have any articulable suspicion of a criminal record precluding licensure.

9. In its proposed business model, Petitioner would apply for alcoholic beverage licenses without initially providing fingerprints and detailed personal information of trustees and beneficiaries of trusts that hold greater than a 0.5% interest in Petitioner’s corporation. As such, provided Petitioner still discloses the aforementioned interests on its application, Petitioner’s proposed business model conforms to specific guidelines detailed in Subsections (5) and (6) of Rule 61A-2.012, F.A.C.

CONCLUSION

10. In conclusion, based upon the facts set out in the submitted Petition for Declaratory Statement, Petitioner’s proposed business model conforms to the specific guidelines listed in Rule 61A-2.012, F.A.C., and in that respect, is valid under Florida law.

11. Pursuant to Subsection (8) of Rule 61A-2.012, F.A.C., however, the Division still retains the right to require fingerprints of persons who may have a direct or indirect interest in the alcoholic beverage license.
12. 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 5th day of April, 2011.

[Signature]

John R. Powell, Director
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 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 Katherine A. O'Donnile, Holland & Knight, 100 North Tampa Street 4100, Tampa, FL 33602 on this 6th day of May, 2011.

Michael W. Ross
Chief Attorney.
FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOL BEVERAGES AND TOBACCO

IN RE: PETITION FOR DECLARATORY STATEMENT BY:
WAWA, INC. DBPR No. DS 2011-011
Petitioner

PETITION FOR DECLARATORY STATEMENT
BEFORE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL
REGULATION, DIVISION OF ALCOHOL BEVERAGES AND TOBACCO

Petitioner, WAWA, INC., a foreign corporation authorized to do business in the State of Florida (herein "Wawa"), by and through its undersigned attorneys, hereby submit this Petition for Declaratory Statement to the Florida Department of Business and Professional Regulation, Division of Alcohol Beverages and Tobacco (herein "DABT"), pursuant to section 120.565, Florida Statutes, and in accordance with Rule 28-105.002, Florida Administrative Code. In particular, Petitioner seeks a declaration by the DABT determining whether certain individuals must be fingerprinted and provide personal information\(^1\) in connection with Wawa's alcohol beverage license applications.

IDENTIFICATION OF PETITIONER AND PETITIONER'S ATTORNEYS

1. Wawa is a privately held New Jersey corporation duly authorized to transact business in the State of Florida and having its principal place of business at Wawa, Inc., Attention: General Counsel, 260 West Baltimore Pike, Wawa, Pennsylvania 19063-5699, with a telephone number of (610) 358-8000 and a facsimile number of (610) 358-8852.

\(^1\) Personal information is used throughout this Petition to refer to data requested in "Section 4, Member/Owners, Stockholder Personal Information" on the State of Florida 2APS license application labeled "DBPR APT - 0001"
2. The name, address and telephone number of Wawa's representatives, which shall be the address for service purposes during the course of these proceedings, are identified with contact information at the end of this petition.

PETITIONERS' SUBSTANTIAL INTERESTS

3. Wawa operates over 580 convenience store food markets/gas stations with over 17,000 employees in New Jersey, Pennsylvania, Delaware, Maryland and Virginia;

4. Wawa plans to enter the Florida market in 2012 and will include alcohol beverages among its available products. Wawa anticipates acquiring 2-APS licenses that will permit the sale of package beer and wine at its Florida stores.

5. Wawa does not currently hold any type of alcohol beverage license in the State of Florida.

6. Wawa currently has almost 300 shareholders. Among these shareholders, a small number hold more than a 0.5% interest, including several trusts (the "Trusts") and an employee stock ownership plan trust (the "ESOP")

7. The Trusts have numerous trustees and beneficiaries. The percentage interest of the beneficiaries in each Trust is not known and can only be determined through an in-depth economic analysis.

8. The ESOP includes thousands of employee participants and is overseen by a trustee.

9. This Petition is limited in scope and only seeks clarification regarding DABT licensure requirements for the Trusts and the ESOP. Wawa acknowledges that other individuals must be fingerprinted and provide personal information, such as, for example, officers and directors of the corporation.
10. Due to vagueness in the statutory and regulatory licensing provisions set forth below, Wawa is in doubt as to which individuals relating to the Trusts and ESOP must be fingerprinted and provide personal information to the DABT, which may subject Wawa to uncertainty regarding its Florida business plan and the feasibility of obtaining alcohol beverage licenses. The potential number of beneficiaries under the Trusts and ESOP could make it impossible for Wawa to secure all the requisite personal information and fingerprints and, therefore, be prohibitive to obtaining alcohol beverage licenses in the state of Florida. Wawa seeks confirmation that providing fingerprints and personal information for the trustees of the Trusts and ESOP will fulfill DABT's requirements for disclosing personal information and providing fingerprints as related to those two shareholders.

11. Wawa has standing to make this licensing inquiry based on its intent to conduct business in the State of Florida, including obtaining alcohol beverages licenses required for package beer and wine sales.

STATUTORY AND REGULATORY PROVISIONS ON WHICH THE DECLARATORY STATEMENT IS SOUGHT

12. Wawa requests the DABT's interpretation of the statutes and rules set forth below.

13. Section 561.17(1), Florida Statutes, entitled "License and registration applicants; approved person" provides that "[t]he applicant must be a legal business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed... the division may require the applicant to file a set of fingerprints... for any person or persons interested directly or indirectly in the business."

14. Furthermore, Section 561.11, Florida Statutes, entitled "Power and authority of division," gives the DABT authority to adopt rules pursuant to Sections 120.536(1) and 120.54, Florida Statutes to implement the provisions of the Beverage Law.
15. The DABT has promulgated rules pursuant to Section 561.11, Florida Statutes addressing the fingerprinting and disclosure of personal information related to an applicant entity in Florida Administrative Code Rule 61A-5:

"61A-5.010 Completed Application.
The term "completed application" as used herein is defined to describe the requirements by which the division will accept any application for a temporary or permanent alcoholic beverage license. . . (b) A DBR form 710L, PERSONAL QUESTIONNAIRE, incorporated herein by reference and effective 2-16-89 must be completed by all applicants and persons directly connected with the business sought to be licensed (c) A set of fingerprints on regular United States Department of Justice forms for each applicant and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought.

* * *

61A-5.710 Personal Questionnaire.
The DBR form 710L, PERSONAL QUESTIONNAIRE, referenced in Rule 61A-5.010, is part of an application for an alcoholic beverage license. The form is to be completed by applicants or persons who have a direct interest in a business for which a license is sought. The form is used by the division to provide background information for investigative leads to determine whether the individual meets all qualifications. The DBR form 710L, PERSONAL QUESTIONNAIRE, is filed in duplicate when required by the division and the signature must be notarized."

16. Furthermore, Rule 61A-2.014, provides as follows:

"The following persons or entities as described below shall file a set of fingerprints at the time of making application for a beverage license or at the time an interest is created after a license has been issued: . . .

(4) All general partners of applicant. Limited partners shall be disclosed on the application and are subject to the provisions of subsection (8) of this rule.

(5) All stockholders with an interest in a corporation holding an alcoholic beverage license which is greater than 5 percent . . .

(6) All directors or officers of a corporation with an interest in an alcoholic beverage license . . .

(8) Should the division have any articulable suspicion that a person with a direct or indirect interest in an alcoholic beverages license other than described above or who is required to be disclosed on the application has a criminal record precluding licensure in accordance with Section 561.15, Florida Statutes, the division may require that person to supply fingerprints as a condition of licensure or of maintaining the license."
17. In addition, DABT's alcohol beverage license application (titled "DBPR ABT - 6001") provides instructions as follows:

"Fingerprints
Fingerprints must be submitted by each individual applicant, all corporate officers, all managing members, all general partners of a limited partnership, all partners of a general partnership, each individual stockholder owning more than .5 percent of stock, and all directors. Each applicant shall submit electronic fingerprints through the department's vendor PearsonVue...

* * *

Partner, Officer, Stockholder Personal Data - Section 4
This section of the application must be completed with original signatures for each applicant or person(s) directly connected with the business, unless they are current licensees. This will include the sole proprietor, all partners, officers, directors, individual shareholders owning more than .5% of stock in nonpublic corporations, general partners of general partnerships, general partners of a limited partnership, and the managing partners of a limited liability company. Directly interested persons include anyone that is connected with the business who has a beneficial interest."

18. The relevant statutes, administrative regulations, and application instructions do not address whether trust beneficiaries or ESOP participants must be fingerprinted and provide personal information to DABT in connection with a corporation's alcohol beverage license application.

19. Wawa believes that the Trusts' beneficiaries and ESOP participants fall outside the class of individuals required to provide fingerprints and personal information, as their interest is remote and is not substantially related, either directly or indirectly, to Wawa's proposed alcohol beverage sales in Florida.

20. Given the scope of relevant statutory and regulatory provisions as outlined above, Wawa is in doubt as to whether it may proceed with its alcohol beverage license applications and provide personal information for only the trustees of the Trusts and ESOP. Accordingly, Wawa poses the following question for which it seeks a declaratory statement:
As to Wawa's ESOP and Trusts component of ownership, can Wawa satisfy the legal requirements of DABT's alcohol beverage licensing process by providing fingerprints and personal information for the trustees of the ESOP and the Trusts rather than engaging in an analysis regarding each individual beneficiary/participant interest?

21. Thus, Wawa respectfully requests that DABT should declare that the above outlined statutes and regulations do not require the beneficiaries of the Trusts or the ESOP participants to provide personal information or fingerprints in connection with Wawa's anticipated Florida alcohol beverage license applications.

WHEREFORE, Wawa respectfully requests that DABT enter a final order that complies with all applicable statutory provisions, agency rules, and agency orders over which the DBAT has authority.

Respectfully submitted this 3rd day of January, 2011.

Katherine A. O'Donnely, Florida Bar No 0051320
Holland & Knight, Attorneys for Petitioner,
WAWA, Inc.
100 North Tampa Street, Suite 4100
Tampa, Florida 33602-3644
(813) 227-6362 Phone
(813) 229-0134 Facsimile
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition for Declaratory Statement was serviced by UPS on January 28, 2010 to:

Clerk's Office
The Department of Business
and Professional Regulation
1940 N. Monroe Street
Tallahassee, FL 32399

Katherine A. O’Donnely

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