



EPSTEIN COHEN SEIF & PORTER, LLP
Attorneys at Law

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/17/2018
File #	

Robert D. Epstein
William S. Cohen*
Abigail L. Seif
James E. Porter
Kristina M. Swanson
James A. Tanford, *of Counsel*
*Registered Civil Mediator

50 S. Meridian Street, Suite 505
Indianapolis, Indiana 46204
(317) 639-1326
Telecopier (317) 638-9891

DS 2018-038

**Petition for Declaratory Statement Before the Florida
Division of Alcoholic Beverages and Tobacco**

From:

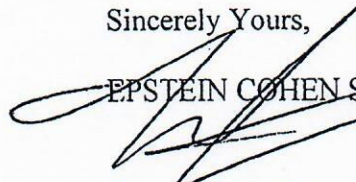
Robert D. Epstein
50 S. Meridian St., Ste. 505
Indianapolis, IN 46204
rdepstein@aol.com
Phone: 317-639-1326 x 111
Fax: 317-638-9891

Dear Sir or Madam:

I represent many retailers across the country. Some of these retailers have expressed their desire to sell, ship and deliver their wines to consumers in the state of Florida, using either their own vehicles or a common carrier. One such retailer is Arnold's Wines, Inc. d/b/a Kahn's Fine Wines and Spirits operated by Jim Arnold located at 5341 N Keystone Ave, Indianapolis, IN 46220. Mr. Arnold has specifically requested this declaratory statement.

We have taken note of Florida Statutes which seem to possibly prohibit this, specifically Florida Statutes 561.545(1) and (2) and 561.54(1). We are seeking a declaratory statement as to whether an out-of-state retailer such as Kahn's Fine Wines and Spirits can sell, ship, and deliver wine directly to consumers in the State of Florida, either by using its own vehicle or by common carrier. If not, can such an out-of-state winery or retailer qualify for any type of license that would allow it to do so?

Sincerely Yours,


EPSTEIN COHEN SEIF & PORTER

Robert D. Epstein
Attorney at Law

Dated 5-14-2018



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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	8/15/2018
File #	2018-06563

IN RE:

DECLARATORY STATEMENT ON BEHALF
OF ARNOLD'S WINES, INC.,
d/b/a KAHN'S FINE WINES AND SPIRITS,

DABT CASE NO.: 2018-026761
DS 2018-038

Petitioner.

DS 2018-038

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division"), pursuant to Rule 28-105.003, Florida Administrative Code ("F.A.C."), files this Final Order on the Petition for Declaratory Statement on behalf of Arnold's Wines, Inc., d/b/a Kahn's Fine Wines and Spirits.

1. Pursuant to section 561.02, Florida Statutes, the Division is authorized to administer and enforce chapters 561 through 568, Florida Statutes, collectively referred to as the "Beverage Law."

2. Petitioner, Arnold's Wines Inc., d/b/a Kahn's Fine Wines and Spirits ("Petitioner"), is an out-of-state retail vendor of alcoholic beverages that is not licensed by the Division. Petitioner is located at 5341 North Keystone Avenue, Indianapolis, Indiana 46204.

ISSUE PRESENTED

3. Petitioner, pursuant to Rule 28-105.003, F.A.C., requests that the Division provide a declaratory statement regarding the applicability of sections 561.54(1), 561.545(1) and 565.545(2), Florida Statutes, to Petitioner's proposed business model.



FINDINGS OF FACT

4. On May 17, 2018, Petitioner submitted to the Division a one-page letter petitioning the Division to provide a declaratory statement on the issues presented within the petition. A copy of the petition is attached hereto as **Exhibit A** and is incorporated by reference.

5. On May 24, 2018, the Division published notice of its receipt of Petitioner's petition in Volume 44, Number 102 of the Florida Administrative Register ("F.A.R.").

6. The F.A.R. notice provided that any motions for leave to intervene were required to be filed within twenty-one days after the notice was published. *See* Rule 28-105.0027, F.A.C. The Division received one motion seeking leave to intervene within the twenty-one day time period. The Wine and Spirits Distributors of Florida, Inc. ("WSDF"), the Florida Independent Spirits Association ("FISA"), the Florida Beer Wholesalers Association, Inc. ("FBWA"), and the Beer Industry of Florida, Inc. ("BIF") (collectively "Prospective Intervenors") filed a motion for leave to intervene on or about June 8, 2018. A copy of the motion is attached hereto as **Exhibit B** and is incorporated by reference.

7. Further, on August 9, 2018, Prospective Intervenors submitted an Amended Motion for Leave to Intervene, a copy of which is attached hereto as **Exhibit C** and is incorporated by reference.

8. The conclusion of this Final Order is based on the facts described in the petition and the particular factual assertions described therein. All of the facts presented in the petition were duly considered and form the basis of this Order. For the following reasons, Prospective Intervenors' Amended Motion for Leave to Intervene is granted, and Petitioner's petition for declaratory statement is granted and answered as set forth below.

CONCLUSIONS OF LAW

9. The Division has jurisdiction over this matter pursuant to sections 120.565, 561.02, 561.08, and 561.11, Florida Statutes, and is responsible for the administration, regulation, and enforcement of chapters 561 through 568, Florida Statutes, commonly referred to as the "Beverage Law".

10. Section 120.565, Florida Statutes, provides:

- (1) 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.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

I. MOTION TO INTERVENE

11. Prospective Intervenor in this matter are associations. An association has standing to participate in declaratory statement proceedings when the association fairly represents members that are substantially affected by the issue presented. *Federation of Mobile Home Owners of Florida, Inc. v. Dep't of Bus. Reg., Div. of Land Sales, Condominiums and Mobile Homes*, 479 So. 2d 252, 254 (Fla. 2d DCA 1985) (adopting the associational standing test established in *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982)).

12. BIF, FBWA, and WSDF members predominately hold state alcoholic beverage licenses as distributors, and FISA members predominately hold state alcoholic beverage licenses as vendors. The petition seeks a determination as to the applicability of section 561.54(1),

Florida Statutes, as well as sections 561.545(1) and (2), Florida Statutes, to Petitioner's proposed business model. Section 561.54(2), Florida Statutes, provides Division licensees with a cause of action pertaining to violations of section 561.54, Florida Statutes. As Prospective Intervenor associations representing Division licensees, each of which would individually have a cause of action stemming from alleged violations of section 561.54, Florida Statutes, the Division finds each association to be substantially affected in this matter.

II. APPLICABILITY OF SECTIONS 561.54 AND 561.545, FLORIDA STATUTES, TO OUT-OF-STATE WINE RETAILERS.

13. The applicability of sections 561.54 and 561.545, Florida Statutes, to out-of-state wine producers and wine vendors is settled. See *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. 2005) (enjoining the Division from enforcing section 561.54 and 561.545, Florida Statutes, against out-of-state manufacturers and vendors of wine). The Division abides by the terms of the order entered in *Bainbridge*, and Petitioner's inquiry is answered accordingly.

CONCLUSION

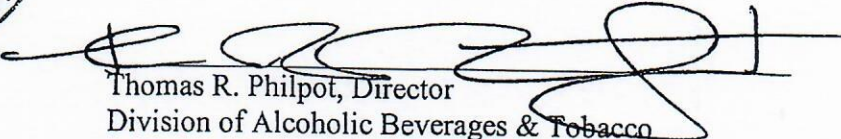
14. This declaratory statement is limited in its scope. This declaratory statement addresses only the sale and delivery of wine by out-of-state retailers. Further, the scope of this declaratory statement does not expressly or implicitly address whether Florida state tax liability is incurred by the sale of alcoholic beverages to consumers in the State of Florida by out-of-state retailers.

15. This statement is based on the facts described in Petitioner's petition and legal research conducted by the Division. Accordingly, this conclusion has no application in the event that the factual circumstances or relationships among the entities described herein are incorrect or change, or in the event a law, rule, or holding of a court of competent jurisdiction pertinent to Petitioner's petition is created, modified, or overruled in the future.

Having considered the facts and circumstances set forth in the petition, it is ORDERED that the Division hereby GRANTS BIF, FBWA, FISA, and WSDF's Motion for Leave to Intervene, and GRANTS Arnold's Wines Inc.'s Petition for Declaratory Statement, and answers Petitioner's inquiry as set forth above.

DONE and ORDERED in Tallahassee, Florida this 15th day of AUGUST, 2018.




Thomas R. Philpot, Director
Division of Alcoholic Beverages & Tobacco