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Legal Services Exclusively for the Alcoholic Beverage Industry



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50 years of Lessons Learned

The History of DTC Wine Shipping From the 1970's to Today

My Beginning – Vietnam 1967



Florida – 1974 California Florida Plant Corporation v. Yoder Brothers



Sonoma Vineyards



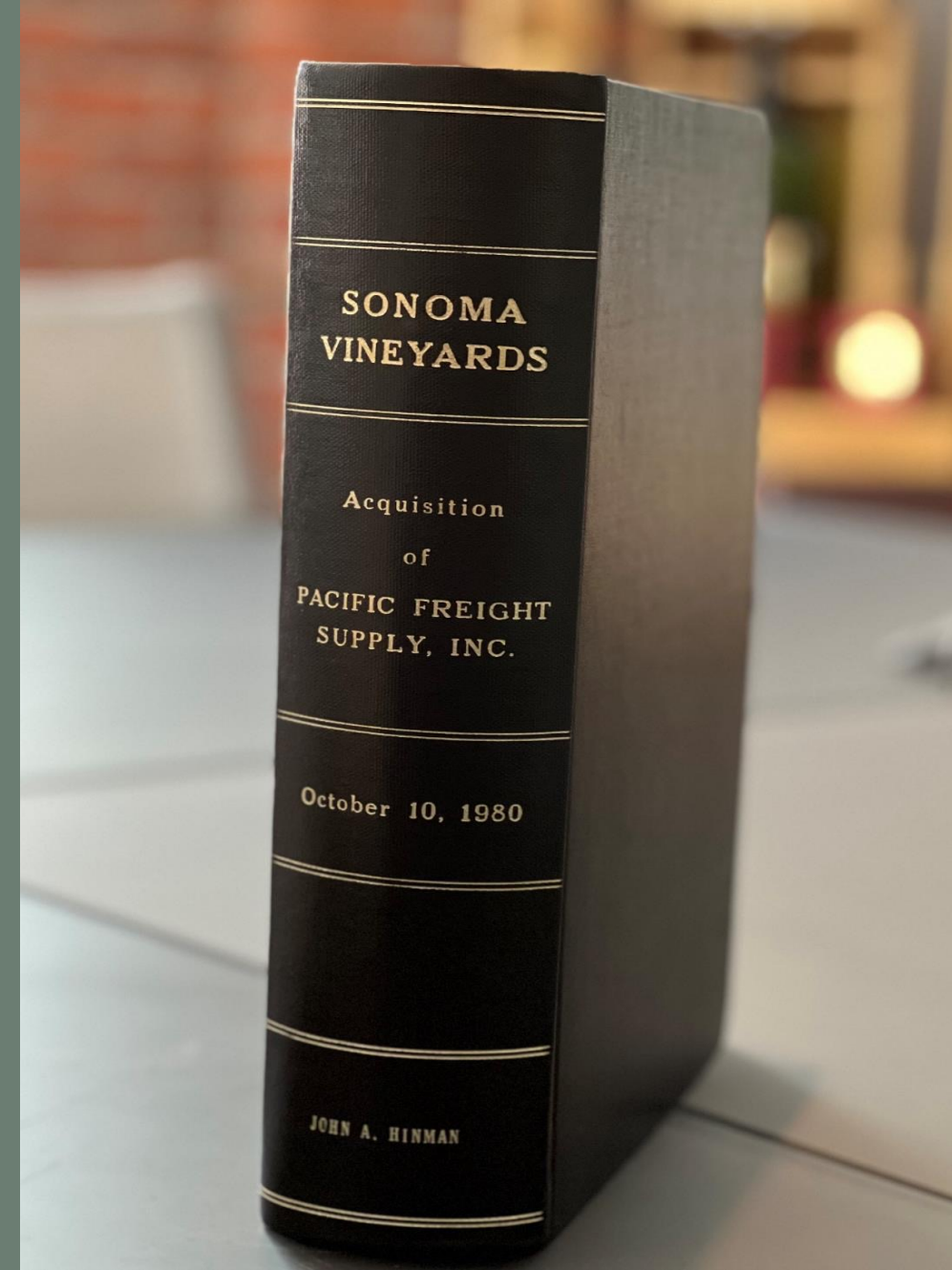
Windsor Vineyards



Alexanders Crown



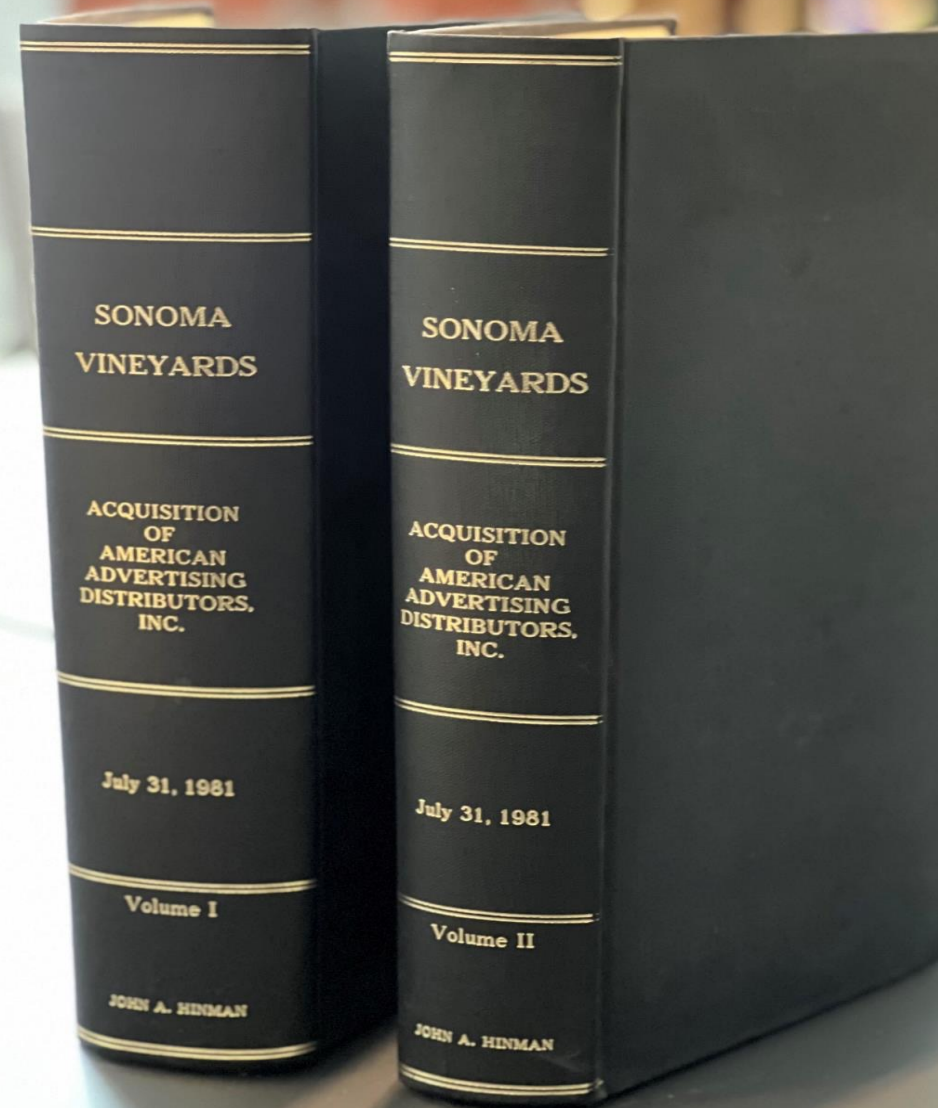
Pacific Freight



Val-Pack Coupons



AADI and Summit Sales



Piper Sonoma Winery



Oppenheimer Syndication deal - 1984



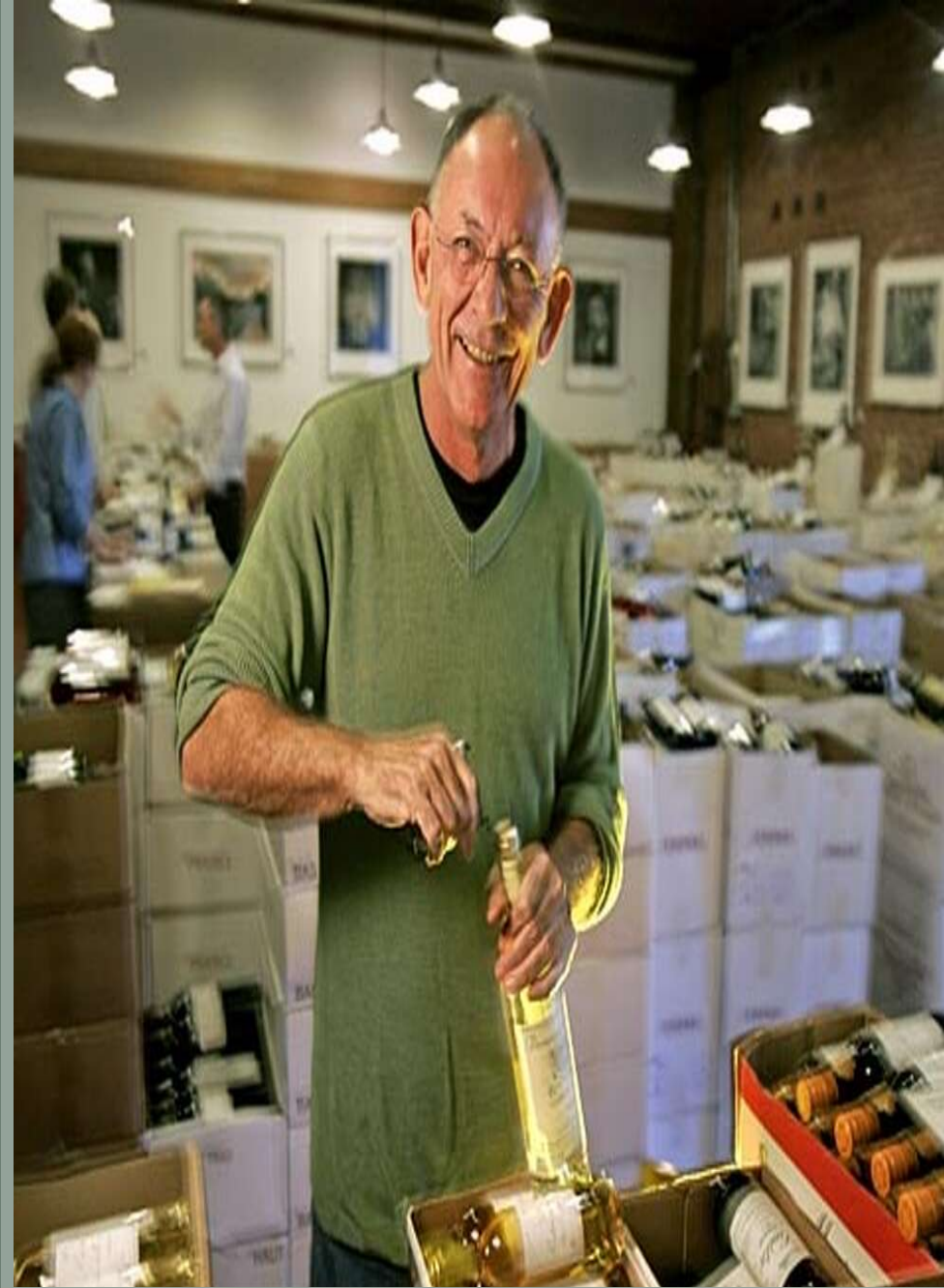
Rodney Strong Vineyards



Jerry Draper



Kermit Lynch



Assembly Bill No. 3090

Passed the Assembly May 12, 1988

[Signature]
Chief Clerk of the Assembly

Passed the Senate April 21, 1988

[Signature]
Secretary of the Senate

This bill was received by the Governor this 16th
day of May, 1988, at 11 o'clock A.M.

[Signature]
Private Secretary of the Governor

AB 3090 — 2 —

CHAPTER

An act to amend Sections 23357 and 23362 of, and to add Sections 23378.2 and 25503.21 to, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3090, Floyd. Alcoholic beverages.

Existing law regulates the issuance of licenses to manufacture and sell alcoholic beverages and specifies those instances in which one class of alcoholic beverage licensee also may hold another class of license.

This bill would authorize a licensed beer manufacturer, a holder of an out-of-state beer manufacturer's certificate, a licensed winegrower or brandy manufacturer, and a licensed wholesaler or importer to be issued and hold retail package off-sale beer and wine licenses, as specified.

Existing tied-house provisions of the Alcoholic Beverage Control Act generally prohibit certain alcoholic beverage licensees from having an interest in various other alcoholic beverage licensees.

The bill would authorize a licensed manufacturer, winegrower, manufacturer's agent, winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler or any officer, director, or agent of that person who has a lease with an off-sale licensee and has entered into that lease prior to July 1, 1987, to continue that lease provided the lessor has no other financial interest in the business of the lessee.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 23357 of the Business and Professions Code is amended to read:

23357. Licensed beer manufacturers may also sell beer to any person holding a license authorizing the sale

— 3 — AB 3090

of beer and may sell beer to consumers for consumption on the manufacturer's licensed premises or on premises owned by the manufacturer which are contiguous to the licensed premises and which are operated by and for the manufacturer. Licensed beer manufacturers may also sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide public eating place on premises owned by the manufacturer which are contiguous to the licensed premises and which are operated by and for the manufacturer. Notwithstanding any other provision of this division, licensed beer manufacturers and holders of out-of-state beer manufacturer's certificates may be issued and may hold retail package off-sale beer and wine licenses. Alcoholic beverage products sold at or from the off-sale premises which are not produced and bottled by, or produced and packaged for, the beer manufacturer shall be purchased by the beer manufacturer only from a licensed wholesaler.

SEC. 2. Section 23362 of the Business and Professions Code is amended to read:

23362. Notwithstanding any other provisions of this division, a licensed winegrower or brandy manufacturer may be issued and may hold an off-sale general license or a retail package off-sale beer and wine license. The issuance of these off-sale general licenses shall be subject to the pertinent provisions of Article 2 (commencing with Section 23815) of Chapter 5 of this division. Nothing in this division shall be construed to be retroactive or to affect the right of a licensed winegrower or brandy manufacturer to hold, renew or transfer any off-sale general license held by such licensed winegrower or brandy manufacturer on the 30th day of September, 1989.

SEC. 3. Section 23378.2 is added to the Business and Professions Code, to read:

23378.2. Notwithstanding any other provision of this division, a licensed wholesaler or importer may be issued and may hold retail package off-sale beer and wine licenses if the wholesaler or importer sells only wine at or from the retail premises.

AB 3090 — 4 —

SEC. 4. Section 25503.21 is added to the Business and Professions Code, to read:

25503.21. Notwithstanding any other provision of this division, a licensed manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, who prior to July 1, 1987, has entered into an active lease of premises to any holder of an off-sale license, may continue to lease premises or renew or otherwise modify such lease with any holder of an off-sale license so long as the lessor holds no financial interest other than such lease in the business of the lessee.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Assembly Bill 1712 (Chapter 68 of the Statutes of 1987) inadvertently removed long-standing statutory authority for beer manufacturers, winegrowers and brandy manufacturers to hold off-sale retail package beer and wine licenses, and for wholesalers and importers of beer and wine to sell wine at retail off-sale premises. Removal of this authority will cause severe financial hardship for small manufacturers and wholesalers who depend on off-premises consumer sales for a substantial portion of their revenues. In addition, many small brewers, winegrowers, and wholesalers would be forced to divest themselves of essential elements of their current business operations. Therefore, it is necessary that this act go into immediate effect.

Approved May 24, 1988

[Signature]
Governor

FILED
In the office of the Secretary of State
of the State of California

MAY 25 1988
MARCH FONG EU, Secretary of State
[Signature]
Deputy Secretary of State

AB 3090 - 1988

SEC. 4. Section 25503.21 is added to the Business and Professions Code, to read:

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Approved May 24, 1988

George Deukmejian
Governor

FILED
In this office of the Secretary of State
of the State of California

MAY 25 1988
4:00 o'clock P.M.
MARCH FONG EU, Secretary of State
By Patricia Roberts
Deputy Secretary of State

AB 3090 signed

French Paraduxx



The FWC Conspirators



AWARE – the purpose

The purposes of the Corporation shall be to develop an alliance among all segments of the wine industry and the public in order to fund research, produce educational materials, and develop programs regarding the economic, social, health, scientific, and cultural aspects relating to the production, sale, and use of wine. It is expressly understood that the Corporation will not be an advocate of health claims, either pro or con, but will instead collect, evaluate and disseminate objective data and information concerning said claims in the public interest.

AMENDED
BYLAWS OF
AMERICAN WINE ALLIANCE FOR RESEARCH AND EDUCATION

ARTICLE I

NAME, OFFICE AND PURPOSE

The name of this corporation is and shall be the American Wine Alliance for Research and Education, (hereinafter referred to as "the Corporation").

The principal office of the Corporation shall be located in San Francisco, California. The principal office and additional offices may be located in such other places as may be determined from time to time by the Board of Directors.

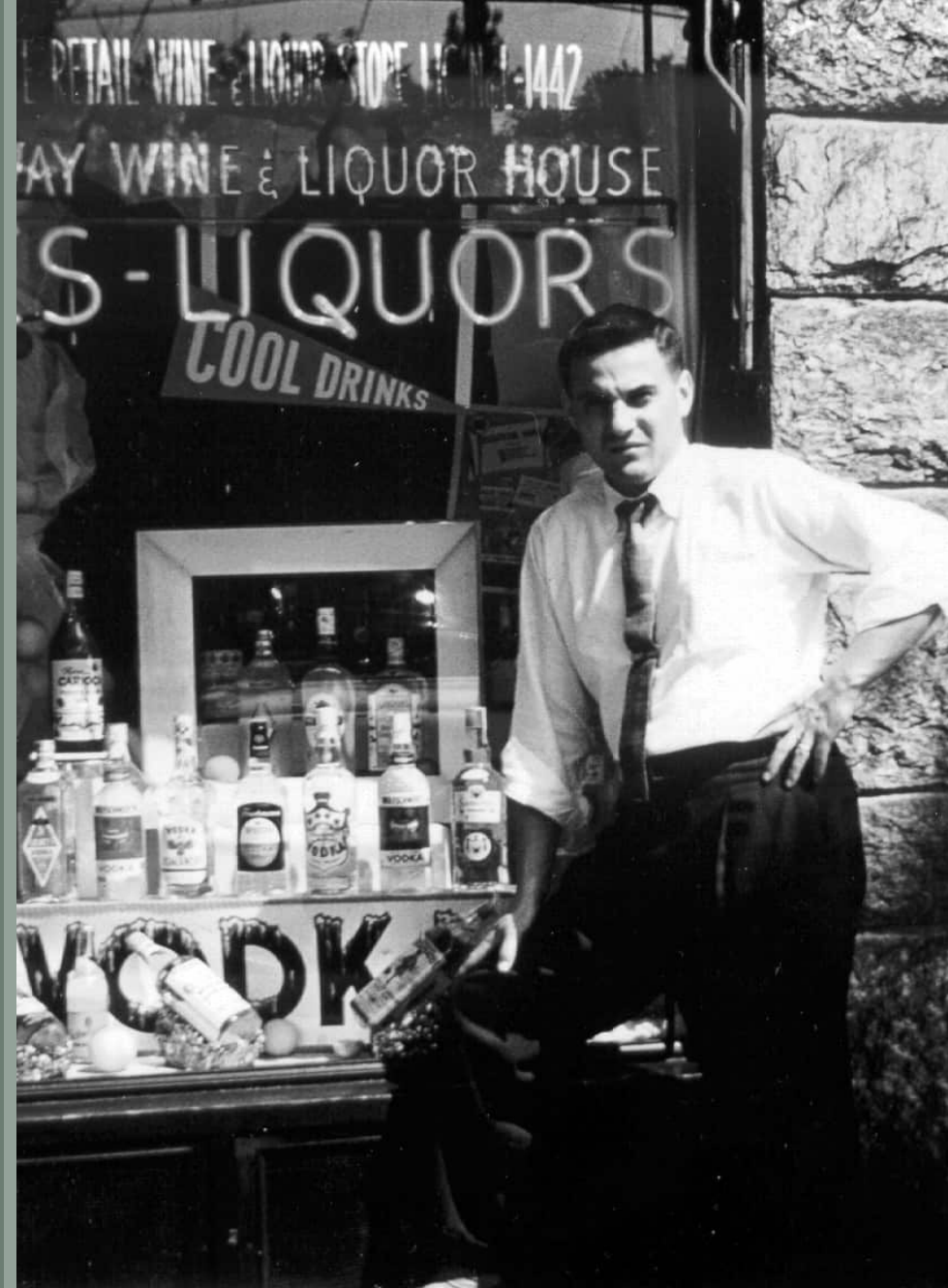
The purposes of the Corporation shall be to develop an alliance among all segments of the wine industry and the public in order to fund research, produce educational materials, and develop programs regarding the economic, social, health, scientific, and cultural aspects relating to the production, sale, and use of wine. It is expressly understood that the Corporation will not be an advocate of health claims, either pro or con, but will instead collect, evaluate and disseminate objective data and information concerning said claims in the public interest.

In pursuing these purposes, the Corporation shall endeavor to study, research, and assemble materials and information, and to present objective analyses thereof, without unsupported opinion, based on a reasoned approach, a full and fair exposition of pertinent facts, and a presentation of balanced views.

A force of nature

The State urges this court to find an implied federal cause of action because it needs a federal forum to enforce its liquor laws. The Supreme Court, however, has rejected necessity as a rationale for implying a right of action. See *Touche Ross Co. v. Redington*, 442 U.S. 560, 575, 99 S.Ct. 2479, 2489, 61 L.Ed.2d 82 (1979) ("We need not reach the merits of the arguments concerning the 'necessity' of implying a private remedy and the proper forum for enforcement of the rights asserted by . . . for we believe such inquiries have little relevance to the decision of this case."). The State offers no clear reason why it needs a federal forum. Additionally, states have been enforcing their liquor laws against out-of-state distributors in state courts for years. See e.g., *Alcohol Div. of Dept. of Finance Tax. v. Strawbridge*, 258 Ala. 384, 63 So.2d 358 (1953); *State v. Ward*, 361 Mo. 1236, 239 S.W.2d 313 (1951). In conclusion, we hold the State does not have an implied federal cause of action under the Webb-Kenyon Act. Because the district court properly dismissed the State's complaint for lack of subject matter jurisdiction, we affirm the district court's judgment.

AFFIRMED.

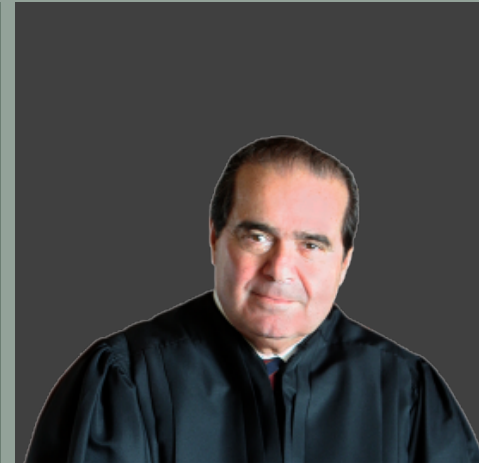


(d) A retail off-sale licensee with annual United States auction sales revenues of at least five hundred million dollars (\$500,000,000) or annual wine auction sales revenues of at least five million dollars (\$5,000,000), may sell wine consigned by any person, whether or not the auctioned wine is “vintage wine” as defined in Section 23104.6, at any auction held in compliance with Section 2328 of the Commercial Code to consumers and retail licensees and may deliver wines sold to any purchaser at that auction from the vendor's licensed premises or from any other storage facility.

The Wine Auction Retail Privilege – 23355.1(d)

GRANHOLD VS HEALD

In a 5-4 opinion delivered by Justice Anthony Kennedy, the Court held that both states' laws violated the commerce clause by favoring in-state wineries at the expense of out-of-state wineries and did so without the authorization of the 21st Amendment. State authority to engage in such economic discrimination was not the purpose the 21st Amendment. Moreover, in modern cases, that amendment did not save state laws violating other provisions of the Constitution.



GRANHOLD VS HEALD COMMERCE CLAUSE

States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms. Without demonstrating the need for discrimination, New York and Michigan have enacted regulations that disadvantage out-of-state wine producers. Under our Commerce Clause jurisprudence, these regulations cannot stand.

7. Plaintiffs contend that, as applied to the direct shipment of wine by out-of-state licensed retailers to adult consumers statutory schemes such as California's violate this nondiscrimination principle, as do plaintiffs in other similar suits pending in the federal courts of this nation. Defendant contests this and, in addition, contends, among other things, that in light of the enforcement history and practice recounted above, Plaintiffs lack constitutional standing to sue and that their claims are not ripe for review. Plaintiffs, in turn, contend that they have constitutional standing and that their claims are ripe for review.

8. Recently, the parties were informed and do believe that the Specialty Wine Retailers Association and/or other wine industry groups intend to pursue legislative action during the 2007-2008 session of the California Legislature to amend the ABC Act to grant all retail licensees in other States the right to sell and ship wine directly from their premises to adult California residents.

KNIGHTSBRIDGE

1. In accordance with Section 1.5 above, Defendant Jolly in his official capacity as Director of the California Department of Alcoholic Beverage Control, and through him, any successor substituted in his place, agrees that the Department will continue to exercise its prosecutorial discretion not to pursue enforcement action of any type pursuant to Cal. Bus. & Prof. Code §§ 23300, 23661, or 23661.2 against retail licensees in other States for selling and shipping wine for personal use and not for resale directly to adult California residents or against common carriers that deliver such shipments for personal use and not for resale to adult California residents.

2. Defendant Jolly, and through him any successor substituted in his place, further agrees that, upon the expiration of Section II.I, as provided below, the Department will not undertake retroactive enforcement action of any type pursuant to Cal. Bus. & Prof. Code §§ 23300, 23661, or 23661.2 against retail licensees in other States based upon any sales and shipments of wine for personal use and not for resale made directly to adult California residents during the period Section II.I was in effect or against any common carrier for delivery of such shipments for personal use and not for resale to adult California residents during the period Section II.I was in effect.

KNIGHTSBRIDGE



AIDV

International Wine Law Association

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An organisation at the intersection of wine and law



D.C.-68

CLOSED

FOR VIOLATION OF
NATIONAL PROHIBITION ACT

BY ORDER OF
UNITED STATES DISTRICT COURT

DISTRICT OF _____

**All persons are forbidden to enter premises without
order from the UNITED STATES MARSHAL**

U. S. GOVERNMENT PRINTING OFFICE: 1975 7-1495

U. S. MARSHAL