

073-138—May 2, 1973

ALCOHOLIC BEVERAGES

REFUSAL TO RENEW DISTRIBUTOR'S LICENSE—AFFILIATION
WITH RECTIFIER OF ALCOHOLIC BEVERAGES*To: Charles Jackson, Executive Director, Department of Business Regulation,
Tallahassee**Prepared by: Henry George White, Assistant Attorney General*

QUESTION:

Do the provisions of §561.24(2) and (4), F. S., require that the Division of Beverage refuse to renew the license of a distributor of alcoholic beverages when the distributor's parent company has acquired all of the assets and business of a foreign corporation which engages in rectifying spirituous liquors in a state other than Florida?

SUMMARY:

The provisions of §561.24 (2) and (4), F. S., require that the Division of Beverage not renew the license of a corporate distributor which is wholly owned by another corporation that has acquired the assets and business of a third corporation which engages in the rectifying of spirituous liquors in a state other than Florida.

Your question is answered affirmatively for the following reasons.

The question you pose arises out of the following facts: A Georgia Corporation (hereafter referred to as "A") wholly owns a Florida Corporation (hereafter referred to as "B") which is and has been a licensed distributor of alcoholic beverages under the laws of this state since at least the year 1946. A has recently announced plans to acquire the business and assets of a California Corporation (hereafter referred to as "C") which engages in the wholesale distribution of wines and liquors in California and also owns a bottling and rectifying plant. A inquired of the Division of Beverage as to the impact which its acquisition of C would have on the future renewal of B's license to distribute alcoholic beverages in Florida. The division was assured by A that none of the products manufactured by C would be offered for sale in Florida by B. In the light of the foregoing facts and the provisions of §561.24 (2) and (4), F. S., the division informed B that if A's plan to acquire C was consummated, the division would be required to refuse to renew B's license. My views are now sought on the same issue.

As the Division of Beverage has already pointed out in its response to A, the answer to the question presented lies in the language of §561.24 (2) and (4), *supra*. This statute presently reads as follows:

(2) No manufacturer, rectifier or distiller, manufacturing, rectifying or distilling spirituous liquors, in any state other than Florida, shall be granted a renewal of a license theretofore held as a distributor or exporter.

* * * * *

(4) If the applicant for a distributor's or exporter's license, or for the renewal thereof, shall be a corporation, such corporation shall be deemed within the provisions of subsections (1) and (2), as the case may be, when such corporation is affiliated with, directly or indirectly any other corporation which is engaged in manufacturing, rectifying or distilling spirituous liquors in any state other than Florida, or when

such applicant corporation is controlled by, or the majority of stock therein is owned by, another corporation, which latter corporation is engaged, directly or indirectly, in manufacturing, rectifying or distilling spirituous liquors in any state other than this state.

The effect of these statutory provisions is to deny the Division of Beverage the authority to renew the license of a distributor if such distributor is also a manufacturer, rectifier, or distiller within the meaning of §561.24 (4), *supra*. The factual situation presented in your letter is squarely governed by the provisions of §561.24 (4), *supra*. In other words, B is a corporate applicant for renewal of a distributor's license. Furthermore, B is controlled by, and all of its stock owned by, A, another corporation. Finally, A indirectly engages in the rectifying of spirituous liquor in a state other than Florida by virtue of its complete ownership of C, a California corporation. Under these circumstances §561.24 (2), *supra*, requires that B's license to distribute alcoholic beverages in Florida not be renewed. This is the conclusion reached by the Division of Beverage. As a rule,

. . . the contemporaneous administrative construction of [an enactment] by those charged with its enforcement and interpretation . . . is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.

Gay v. Canada Dry Bottling Co. of Florida, 59 So.2d 788 (Fla. 1952), at 790.

It should be noted that the foregoing interpretation of §561.24, *supra*, is contrary to the decision in *State ex rel. Continental Distributing Sales Co. v. Vocelle*, 27 So.2d 728 (Fla. 1946), the facts of which were somewhat analogous to the situation presently at issue. In that case the state beverage officials contended that a Florida corporate subsidiary of a foreign holding company was ineligible for a distributor's license under §561.24, F. S. 1941. This contention was based on the fact that the Florida subsidiary was owned by, and thus controlled by, the foreign holding company which indirectly engaged in the manufacture of liquor in another state through another manufacturing subsidiary. The Supreme Court rejected this contention and held that the provisions of §561.24, F. S. 1941, only prohibited the issuance of a distributor's license to those *directly* engaged as a manufacturer.

However, the legislature enacted Ch. 23899, 1947, Laws of Florida, amending §561.24, F. S. 1941, to read in pertinent part as follows:

(4) If the applicant for a distributor's license, or for the renewal thereof, shall be a corporation, such corporation shall be deemed within the provisions of subsections (1) and (2) of this section, as the case may be, when such corporation is affiliated with, directly or indirectly, any other corporation which is engaged in manufacturing, rectifying or distilling spirituous liquors in any state other than the State of Florida, or when such applicant corporation is controlled by, or the majority of stock therein is owned by, another corporation, which latter corporation *owns, or controls in any way, the majority of stocks or controlling interest in any other corporation which is engaged, directly or indirectly, in manufacturing, rectifying or distilling spirituous liquors in any state other than the State of Florida.* (Emphasis supplied.)

The above-quoted amendment was obviously a legislative response to the interpretation which the Supreme Court had given to §561.24 in the *Vocelle* case. The purpose of the amendment appears to have been to clarify the legislature's intention that a corporation not be licensed to distribute alcoholic beverages in Florida if that corporation is controlled by, or a majority of its stock owned by, another corporation which engages either *directly* or *indirectly* in

manufacturing, rectifying, or distilling spirituous liquors in a state other than Florida.

It will be noted that the present text of §561.24 (4), *supra*, is the same as that of the 1947 amendment with the exception of those provisions which are italicized above. This portion of the statute was deleted by Ch. 63-562, Laws of Florida. However, the 1963 amendment does not appear to represent a change in policy by the legislature. The present provisions of §561.24 (4) still proscribe the licensing of a corporate distributor in Florida when that corporation is controlled by another corporation which *directly* or *indirectly* engages in the rectifying of spirituous liquors in another state. It would seem, therefore, that the 1963 amendment of §561.24 (4), was merely intended to delete redundant provisions of the statute.

The 1947 amendment to §561.24, F. S. 1941, also included a so-called "grandfather clause," which presently appears as §561.24 (5), F. S. This subsection reads as follows:

(5) Notwithstanding any of the provisions of the foregoing subsections, any corporation which holds a license as a distributor on June 3, 1947, shall be entitled to a renewal thereof, provided such corporation shall comply with all of the provisions of the beverage laws of Florida, as amended, and of this section and shall establish by satisfactory evidence to the board of county commissioners of the county wherein the original license was issued that during the six months period next preceding its application for such renewal, that, of the total volume of its sales of spirituous liquors, in either dollars or quantity, not more than forty per cent of such spirituous liquors sold by it, in either dollars or quantity, were manufactured, rectified or distilled by any corporation, in any state other than Florida, with which the applicant is affiliated, directly or indirectly, including any corporation which owns or controls in any way any stock in the applicant corporation or any corporation which is a subsidiary or affiliate of the corporation so owning stock in the applicant corporation.

A question has been raised as to whether B comes within the purview of §561.24 (5), *supra*. The Division of Beverage has ruled that under the facts of the present situation, B is not covered by the grandfather clause. The division has interpreted §561.24 (5) as applicable solely to licensed corporate distributors which were affiliated with, controlled by, or owned by corporations which were engaged directly or indirectly in manufacturing, distilling, or rectifying spirituous liquors outside of Florida as of June 3, 1947. In other words, the division's position is that while B held a distributor's license on June 3, 1947, it was not, as of that date, directly or indirectly connected with a corporation which rectified spirituous liquors outside of Florida, and was therefore not within the purview of §561.24 (5).

As was observed earlier, the decision in the case of *State ex rel. Continental Distributing Sales Co. v. Vocelle*, *supra*, appears to have motivated the enactment of Ch. 23899, *supra*. In the light of the apparent legislative intention that a clear separation be maintained between the manufacture and distribution of alcoholic beverages in Florida, it is unlikely that the legislature intended that §561.24 (5), *supra*, be construed so as to allow any distributor licensed in Florida on June 3, 1947, to at any time thereafter become affiliated with or controlled by a foreign corporation which engages in manufacturing spirituous liquors. On the contrary, it is more likely that the legislature intended the grandfather clause of Ch. 23899, *supra*, to be applicable only to Florida corporate distributors which were already affiliated with or controlled by an out-of-state manufacturer, rectifier, or distiller of spirituous liquors. Thus, §561.24 (5) applies only to

Florida distributors which, as of June 3, 1947, were in a position similar to that occupied by the respective parties in the *Vocelle* case. That the legislature intended the grandfather clause to be strictly applied is indicated by §8 of Ch. 23899, which presently appears as §561.24 (8), F. S., and reads as follows:

(8) Any maneuver, shift or device by any applicant whereby any provision of this section, in any manner, is sought to be avoided or evaded shall constitute a felony of the third degree

In the light of the apparent purpose and intent of the legislature when it enacted §561.24 (5), *supra*, it appears that the Division of Beverage was correct in concluding that B did not come within the provisions of the grandfather clause. This determination is not clearly erroneous and is therefore entitled to great weight. *Gay v. Canada Dry Bottling Co., supra*.

In conclusion, it should be pointed out that the foregoing interpretation of §561.24, *supra*, is not affected by the fact that the spirituous liquors produced by C will not be sold by B in Florida. The only exception to the provisions of the statute are those contained in §561.24 (5). As has already been noted, B does not qualify for that exception. It is also important to understand that §561.24 does not give the division authority to regulate the manufacture or distribution of alcoholic beverages beyond this state, or to prevent the acquisition of C by A. The statute merely establishes the requirement that an individual or corporation desiring to obtain or renew a license for distribution of alcoholic beverages within the State of Florida must not be controlled by a corporation which engages directly or indirectly in the rectifying of spirituous liquors in a state other than Florida.

The companies involved have submitted a brief to this office in which they argue that the Florida law is limited by federal constitutional considerations to the conduct, management, and operation of the sale of alcoholic beverages within the state. They argue that since none of the beverages manufactured in California will be distributed in Florida the subject transaction must be considered exempt from §561.24 (2) and (4), *supra*.

We have reviewed the cases cited in support of the above proposition and we find them to be factually distinguishable. While we recognize the possibility that the proposition discussed in those cases might, in the future, be judicially extended to cover the present fact situation, we are not prepared to presume such an extension at this time. The language of the statute is unambiguous and, until judicially or legislatively determined to the contrary, we do not perceive it to be within the scope of our authority to read exceptions into that language.

073-139—May 2, 1973

LANDLORD AND TENANT

EJECTMENT OF UNDESIRABLE GUEST OR TENANT

To: *Grover C. Robinson III, Representative, 1st District, Tallahassee*

Prepared by: *Henry George White, Assistant Attorney General*

QUESTIONS:

1. Is §509.141, F. S. 1971, applicable for the purpose of ejecting apartment leaseholders?
2. Is there a conflict between the conclusion in AGO 071-152 and that in AGO 072-134?

SUMMARY:

The provisions of §509.141, F. S. 1971, concerning the ejectment of